179

No. (1)

Supreme Court, U.S.
FILED

10-906

OCT 18 2010

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

James D. Schneller, Heirs & Beneficiaries of Marjorie C. Schneller, by James D. Schneller, Trustee Ad Litem; Estate Of Marjorie Schneller, by and through James D. Schneller, Trustee Ad Litem; Marjorie Zitomer, Executrix of the Estate Of Marjorie Schneller; Estate of George H. Schneller, by and through Personal Representative James D. Schneller

Petitioner

v.

Crozer Chester Medical Center, dba Taylor Hospital And Crozer Keystone Health System; Suburban Pulmonary Medicine And Principals; Daniel Dupont, D.O.; E. Heffelfinger, D.O.; Gerald Meis, D.O.; Gurpreet Kochar, M.D.; Lalitha Gurijala, M.D.; Marjorie Zitomer; G. Richard Schneller; T. Sergeant Pepper, Esquire; Herman Mcgill, M.D.; Hepburn, Wilcox, Hamilton & Putnam, LLP

Respondents

PETITION FOR WRIT OF CERTIORARI

James D. Schneller pro se
500 E. Lancaster Ave. #111d
Radnor, PA 19087
610-688-9471

I. QUESTIONS PRESENTED

A. Has The Third Circuit Court of Appeals Abused Discretion And Erred In The Law, In Misapprehending The Strength Of Plaintiff's Federal Question Causes Of Action For Violation Of The Assisted Suicide Funding Restriction Act Of 1997, and The Comprehensive Drug Abuse Prevention And Control Act, and In Finding That A Private Right Of Action Does Not Exist For Such Claims. Plaintiff Requests A Finding That Such Private Rights Of Action Exist.

B. Has The Third Circuit Abused Discretion By Misapprehending The Viability Of Plaintiff's Federal Question Causes Of Action Under 42 U.S.C.§ 1983, 42 U.S.C.§ 1985(2), 42 U.S.C.§ 1985(3), and 42 U.S.C.§ 1986 ? The Court Is Requested To Review An Issue Regarding State Enforcement Of Agreement Between Parties.

C. Whether The Court Of Appeals and The District Court Have Decided In Conflict With Numerous Decisions of the Circuit Courts, and of This Court, Warranting Reversal, In The Matter Of Jurisdiction Over Federal Questions In Plaintiff's Complaint, and Supplemental Jurisdiction, and In Doing So Without Leave To Amend ?

TABLE OF CONTENTS

QUESTIONS PRESENTED 1

Table of Contents 2

Table of Appendices 3

Table of Authorities 4

I. JURISDICTION 5

II. OPINIONS BELOW 6

III. STATEMENT OF RELATED CASES 6

IV. STATEMENT OF THE CASE 7

V. REASONS FOR GRANTING THE WRIT

A. 8

B. 21

C. 29

VI. CONCLUSION 46

VII. TEXTS OF PERTINENT STATUTES 48

TABLE OF CONTENTS - Continued

APPENDIX

a. Opinion and Order entered July, 2010 by the U.S. Third Circuit Court of Appeals App. - p. 49

b. Order and memorandum entered March 19, 2009 by the Eastern District of Pennsylvania App. - p. 64

c. Order of Eastern District of Pennsylvania of June 26, 2009 denying reconsideration App. - p. 86

d. Order of Eastern District of Pennsylvania entered June 26, 2009 denying motion to reply and to dismiss non-diversity defendants App. - p. 88

TABLE OF AUTHORITIES

CASES

Allen v. State Bd. of Elections, 89 S.Ct. 817 (U.S.Va.,1969) 10

Ash v. Cort, 350 F.Supp. 227 (E.D. Pa.,1972) 16 , 41

Aurecchione v. Schoolman Transp. System, Inc., C.A.2 (N.Y.) 2005, 2005 WL 2277538, opinion corrected and superseded 426 F.3d 635 35

Brogan v. La Salle University, 70 F.Supp.2d 556 (E.D.Pa.,1999) 26

Brown v. Philly Morris Inc., 250 F.3d 789, 805 (3d Cir. 2001) 22

Cecile Industries, Inc. v. U.S., 793 F.2d 97 (C.A.3 Pa.), (1986) 41

Clark v. National Travelers Life Ins. Co., C.A.6 (Tenn.) , 518 F.2d 1167 (1975) 46

Collinsgru v. Palmyra Bd. of Education, 161 F.3d 225 42

Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S.Ct. 1236(1976) 37

Com. of Pa. v. Local Union No. 542, Intern. Union of Operating Engineers, 347 F.Supp. 268 (E.D.Pa.,1972) 27

Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99 32

Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080 (1975) 11

Cruz v. Donnelly, 727 F.2d 79, 82 (3d Cir.1984) 27

Diggs v. Pennsylvania Public Utility Commission, 180 F.2d 623 (C.A.3.Pa.,1950) 30

Fidelity & Cas. Co. v. Reserve Ins. Co., C.A.9 (Cal.) 1979, 596 F.2d 914 32 , 41

Flint v. A.P. Desanno & Sons, 234 F.Supp.2d 506 (E.D.Pa.,2002) 37
Gardner v. Florida, 430 U.S. 349 (1977) 38
Gonzales v. Oregon, 126 S.Ct. 904 (2006) 18
Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790 (1971) 24
Growth Horizons, Inc. v. Delaware County, Pa., 983 F.2d 1277 (3d Cir.1993) 36
In re Brown, 439 F.2d 47 (C.A.3.V.I.,1971) 30
In re Murchison, 75 S.Ct. 623 (U.S.Mich.,1955) 30
In Re Prudential Insurance Company America Sales Practice Litigation Agent Actions. 148 F.3d 283, 41 Fed.R.Serv.3d 596 (C.A.3, 1998) 36
Klavan v. Crozer-Chester Medical Center, 60 F.Supp.2d 436 (E.D.Pa.,1999) 26 , 28
Lake v. Arnold, 112 F.3d 682, 65 USLW 2717 (C.A.3 (Pa.),1997) 32
Lake v. First Nationwide Bank, 156 F.R.D. 615 25
Lloyd v. Regional Transportational Authority, 548 F.2d 1277 (7th Cir. 1977) 18
Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 50 U.S.P.Q.2d 1665 (C.A.3 (N.J.),1999.) 43
McCain v. Beverly Health and Rehab.Services, Not Reported in F.Supp.2d, 2002 WL 1565526 (E.D.Pa.) 40
Nernberg v. City of Pittsburgh, 50 F.Supp.2d 437 (W.D.Pa.,1999.) 37
NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986) 22
O'Dell, Petitioner v. Charles Thompson, Warden, Et Al, 502 U.S. 995; 112 S. Ct. 618; 116 L. Ed. 2d 639; 1991 U.S. LEXIS 6766 (1991) 38

Osei-Afriyie v. Medical College of Pa., 937 F.2d 876, 882 (3d Cir. 1991) 42
Packard v. Provident National Bank, 994 F.2d 1039 (CA3 1993) 44
Rotolo v. Borough of Charleroi, C.A.3 (Pa.) 1976, 532 F.2d 920 23 , 35
Rousseau v. City of Philadelphia, 589 F.Supp. 961 (E.D.Pa.,1984) 37
Sament v. Hahnemann Medical College and Hospital of Philadelphia, 413 F.Supp. 434 (E.D.Pa.,1976) 27
Scattergood v. Perelman, C.A.3 (Pa.) 1991, 945 F.2d 618, rehearing denied. 35
Schappacher v. United States, 475 F. Supp. 2d 749, 755-56 (S.D. Ohio 2007) 39
Shaffer v. Bd. Of School Directors of the Albert Gallatin Area Sch. Dist., 730 F. 2d 910, 912 (3d Cir. 1984) 37
State of N.J., Dept. of Environmental Protection and Energy v. Long Island Power Authority, 30 F.3d 403 (C.A.3.N.J.,1994) 11
Three Rivers Center for Independent Living v. Housing Authority of City of Pittsburgh, 382 F.3d 412 (C.A.3.Pa.,2004) 10
Troupe v. Chicago, D. & G. Bay Transit Co., C.A.2 (N.Y.) 1956, 234 F.2d 25322 22
Tully v. Mott Supermarkets Inc., 540 F.2d 187, 196 (3d Cir. 1976) 37
Union Tool Co. v. Wilson, 42 S.Ct. 427 (U.S.Cal.,1922) 24
United States v. Harris, 106 U.S. 629, 1 S.Ct. 601 (1882) 24
Urie v. Thompson, 337 U.S. 163, 170, 93 L. Ed. 1282, 69 S. Ct. 1018 (1963) 38

Velandra v. Regie Nationale des Usines Renault, C.A.6 (Mich.) 1964, 336 F.2d 292 32
Washington v. Glucksberg, 521 U.S. 702, 117 S.Ct. 2258 (U.S.Wash.,1997) 16

STATUTES

18 U.S.C. Criminal Code 39
21 U.S.C. § 801 25
21 U.S.C. § 802 39
21 U.S.C. § 829 19
21 U.S.C. § 843 19
21 U.S.C. § 847 20
28 U.S.C. § 1254(1) 5
28 U.S.C. §1331 25
28 U.S.C.§1367 36

29 U.S.C. § 794 39
42 U.S.C.§ 1983 1 , 21 , 22 , 23 , 24 , 25 , 27 , 48
42 U.S.C.§ 1985(2) 1 , 21 , 22 , 23 , 24 , 48
42 U.S.C.§ 1985(3) 1 , 21 , 22 , 23 , 24 , 48
42 U.S.C.§ 1986 1 , 21 , 22 , 23 , 24
42 U.S.C. § 2000a 39
42 U.S.C..§ 2000bb 39

42 U.S.C.§ 3001 24 , 39
42 U.S.C.§ 6100 24 , 39

42 U.S.C § 10400	39
42 U.S.C.§ 12101	24
42 U.S.C § 13981	24 , 39
42 U.S.C. §14401	9 , 11 , 12 , 14
42 U.S.C. §14402	13 , 25
42 U.S.C. §14404	13
42 U.S.C. §14405	13
42 U.S.C. §14406	15 , 16
42 U.S.C. §14408	16
42 C.F.R.§ 483.01	41
42 C.F.R.§ 483.10	25
42 Pa.C.S.§5355	35 , 40
Pa.R.C.P. 2202	42

To the Justices of the Supreme Court:

Petitioner James D. Schneller, representing himself, on behalf of all plaintiffs and/or the issues affecting them, requests a writ of certiorari to the Third Circuit Court of Appeals, and relief in the alternative, stating as follows :

I. JURISDICTION

This petition is taken from a decision of a United States Circuit Court of Appeals. The date on which the United States Third Circuit Court of Appeals decided this case was July 20, 2010.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)

Petitioner has raised his objections and arguments in regard to the issues presented in this petition, in the proceedings below. Petitioner raised all issues including the within questions, in the pleadings which he presented to the trial Court, making certain to preserve any issues, due to lack of hearing and failure of the defendants to address many of the issues in response. Each issue in these proceedings was afforded an opportunity for response by respondents.

II. OPINIONS BELOW

The United States Court of Appeals for the Third Circuit decided this case in an order and opinion, dated July 20, 2010.

The District Court for Eastern Pennsylvania decided this case in a memorandum and order entered March 19, 2009.

III. STATEMENT OF RELATED CASES

Petitioner (also referred to as "plaintiff"), the sole living plaintiff , filed in the District Court for Eastern Pennsylvania, at the time of filing the within case, civil action No. 06-cv-545, and 06-cv-1504, which followed a path similar to that in this case and appeal was taken at the same time, so that appeal No. 09-4372 (Schneller et al v. Prospect Park et al, D.C. No. 08-5704) was recently considered by the Court by way of a petition for writ of certiorari No. 10-227 and appeal No. 09-4755 (Schneller et al v. Fox Subacute et al D.C. No. 06-1504) is scheduled for conference on October 25, 2010 before the Court. Those two petitions were arguably limited to a procedural issue regarding timeliness of appeal.

IV. STATEMENT OF THE CASE

Son-caregiver filed civil rights action and alleging statutory violations, breach of contract and survival causes of action surrounding intentional deprival of care and debilitating unwanted doses of morphine to semi-elderly patient who died as a result, amidst, inter alia, misuse of powers of attorney and advance health directive. Plaintiffs sue a hospital, a pulmonary practice, a cardiologist, petitioner's brother and sister and their attorney, who was also petitioner's attorney at the time, and a psychiatric physician, who fraudulently declared the alert and communicative victim to be incompetent.

The motion for leave to proceed in forma pauperis was denied and the case ordered closed. Plaintiff appealed and lost, paid the fee, and on appeal from sua sponte, ex parte dismissal, the Third Circuit Court of Appeals vacated and remanded with directions to serve, and to grant petitioner leave to file an amended complaint. The District Court did not act, so plaintiffs filed a complaint just within the year permitted under the state "savings statute." After argument, which petitioner has objected was solely an effort to cause him to settle through a threat of dismissal, the District Court granted all motions to dismiss based on jurisdictional

defects including objections under the statute of limitations. The Third Circuit affirmed including affirmance of the findings of no private rights of action in various statutes. This appeal follows.

V. ARGUMENT

A. Has The Third Circuit Court of Appeals Abused Discretion And Erred In The Law, In Misapprehending The Strength Of Plaintiff's Federal Question Causes Of Action For Violation Of The Assisted Suicide Funding Restriction Act Of 1997, and The Comprehensive Drug Abuse Prevention And Control Act, and In Finding That A Private Right Of Action Does Not Exist For Such Claims. Plaintiff Requests A Finding That Such Private Rights Of Action Exist.

Petitioner claims error of law and argues abuse of discretion in the Circuit Court's declarations that no rights of action nor private rights of action exist in the statutes violated, and argues here the Circuit Court's focused decision on two particular statutes.

The federal statute 42 U.S.C. Chapter 138 entitled Assisted Suicide Funding Restriction, 42 USC §14401 et seq, provides that no funds appropriated by Congress for the purpose of paying (directly or indirectly) for the provision of health care services, may be used to provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

The defendants are claimed to have wrongfully implemented an advance health directive in a surreptitious manner against the conscious and cheerful victim, and to have continually increased a large dose of morphine sulfate to her. Plaintiff has certified, under state law, as to the written statement of a qualified expert stating a clinical prevention of recuperation of the victim, through the false determination of incompetence, and through excessive dose leading to failure of rehabilitation and to death. The excessive dose acted as an unlawful chemical restraint which was implemented for the furtherance and conclusion of the assisted suicide. These, as claimed, occurred at the same time as concealment of an operable or otherwise treatable condition, and deprival of general treatment. These semi-direct determinations and activities regarding the advance health directive, denial of services, and

concealment of diagnosis, are claimed to fall under the statute's wording : "service furnished for the purpose of causing . . death . .". . Taylor Hospital is liable as they are the party responsible for submitting bills to Medicare and other programs, as are any of the physician defendants who submit bills to the federal government.

Petitioner's argument would proceed competently to a conclusion opposite to that of the Third Circuit, as the following examples show. Federal statute which is passed to protect a class of citizens, although not specifically authorizing members of the protected class to institute suit, nevertheless implies private right of action. Allen v. State Bd. of Elections, 89 S.Ct. 817 (U.S.Va.,1969) The ASFRA is such a statute. written to protect certain classes of citizens, said class including the elderly and the the infirm, and, to plaintiff's belief, their caregivers.

An implied right of action is also supported by Congress' intent for a private remedy. When statutes do not contain provisions addressing either whether private parties may maintain a right of action or the scope of a right of action a private party may maintain, courts may still recognize a private right of action in one or both of two ways: first, a court may find an implied right of action in the statute; second, § 1983 may provide a private right of action. 42 U.S.C.A. § 1983. Three Rivers. Congress in Chapter 138 plainly establishes a

personal right, in the statement of findings and purpose, that " Assisted suicide, euthanasia, and mercy killing have been criminal offenses throughout the United States and, under current law, it would be unlawful to provide services in support of such illegal activities." 42 U.S.C.§ 14401(a)(2). The Court has set out the "Factors relevant in determining whether a private remedy is implicit in a statute not expressly providing one, [which] are: (1) is plaintiff one of the class for whose especial benefit the statute was enacted? (2) is there any indication of legislative intent, explicit or implicit, either to create such a remedy or deny one? (3) is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for plaintiff? and (4) is the cause of action one traditionally relegated to state law so that it would be inappropriate to infer a cause of action based solely on federal law? Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080 (1975) State of N.J., Dept. of Environmental Protection and Energy v. Long Island Power Authority, 30 F.3d 403 (C.A.3.N.J.,1994) The Cort elements, as updated and further clarified by all Courts, have been met as to Chapter 138.

Congress can be presumed to be aware of the fact that Medicare would not, and does not, enforce the A.S.F.R.A. at all, and that the Medicare payment system is characterized by an appeal process that is

reimbursement-centered rather than substance-centered. Congress when passing this law was aware that the administrative appeal process would be a step too slow and layer-adding to be an efficient means to forestall funds applied to an assisted suicide. The statute imposes Federal oversight in a manner decisive and with a statement of intent so that the Federal arm - the District Court - is not an unanticipated means of resolution of claims for relief. The Civil Rights Act itself was originally worded to provide administrative mechanism for terminating federal financial support for institutions engaged in prohibited acts.

Of note, Chapter 138 contains language which appears to definitively not forbid a private right. § 14401 (b) states : " It is the principal purpose of this chapter to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual. " The statement "principal purpose" allows for secondary purposes, which plaintiff believes includes a private right of action. The law is written to forbid physicians, hospitals, and all others dependant on a wide reaching list of funds, from using those funds for intentional killing, and by inference, to discourage those recipients of funds from

any such acts, because they are generally dependant on the dole. 42 C.F.R§ 14402 (a) states " no funds appropriated by Congress for the purpose of paying (directly or indirectly) for the provision of health care services may be used— (1) to provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing;. . " The phrase "directly or indirectly" indicates an intent by Congress to create a forbiddance of a much wider scope, by expressly stating that indirect application of funds for the outlawed purposes will not be tolerated. In section § 14404 and § 14405 Congress restricts the use of "other Federal funds" and forbids the use of funds for advocay groups such as for compelling such activity, or for "asserting or advocating a legal right to cause, or to assist in causing" such activities. 42 U.S.C.A.§ 14404(a)(3) and forbidding use of funds for Legal Assistance. 42 U.S.C.A.§ 14404(b)(1)(E). 42 U.S.C.A.§ 14405

Congress has expressed a clear finding of a need to slow and deter what it considers unlawful and unconstitutional behavior. The case law in this field shows a progression of the United States Courts and state appellate courts away from a finding of legality of any law allowing assisted suicide. The findings and

purpose of the ASFRA as stated in 42 U.S.C.§ 14401 show Congress' concern that funding for assisted suicide not occur. The fact that the case law is diminutive allows this Court to better analyze the scenario in which Congress passed the law. Although no State has passed such a measure since, the scenario sadly also includes efforts in facilities in every state and every county of this nation to circumvent such intent. While Congress has provided for education and continuing remedy to the problem of intentional assisted death, the concurrent, and further enlivened, avenue for hospice treatment, is matched by illegal acts, the stuff of which are known to every nursing home administrator and every eldercare attorney. Congress was aware of this issue, and the fact that such ill behavior was encouraged by the legislation and public awareness efforts of the euthanasia proponents, at the time that they passed the Act. Lack of reporting to agencies and law enforcement and unattractiveness to attorneys was and remains apparent. Law enforcement avoids the use of laws against suicide and to plaintiff's knowledge, the few statutes regarding misuse of advance health directives and deprival of care are rarely enforced. Congress is completely aware of these issues and of the general lower priority of such matters in the order of the attornies general and prosecutors. In the A.S.F.R.A., assisted suicide is not

only prevented from being a right, but the right to protect life, liberty, and property is re-established, and this in the realm of medicine, where the line is thousands of times daily drawn between life and death. The Courts are open. Law enforcement, if the lack of enforcement of recent laws regarding post-abortion procedure is an indication, is not ready or not willing to enforce issues inside medical facilities. The ASFRA is written to avoid overlap with laws regarding advance health directives, simplifying litigation. Too often the victim is alone, or accompanied by the uninformed, or negatively affected by the better informed. Progress has created a fulfillment of life's expectations through the elder years, yet the culmination, which is an important moment, as recognized by the enlightened and the religious, is reduced for some to any of an array of serious errors and injustices. Congress intended a private right and a private right of action. Congress passed the Act with the intent that litigation be made pursuant to it.

Section 2 of §14406 entitled Clarification with respect to advance directives, directs that "sections 1395cc (f) and 1396a (w) of Title 42," dealing with payments or payments to States, shall not be construed " (2) to apply to or to affect any requirement with respect to a portion of an advance directive that directs the purposeful causing of, or the purposeful assisting in

causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing," further supports a finding of Congress' awareness of the contentious nature of the Act. Congress in enacting this section has taken note of issues that will prevail as the purposes of the Act are met. These issues are, to the knowledge of Congress, litigation-intensive, insofar as that is a predominant remedy where controversies occur between parties, and so the omission of any bar to judicial action in the Act carries with it an implied right of action. This is again apparent in §14408, which directs that the provisions of the Act supersede other Federal laws. 42 U.S.C.§ 14406, 42 U.S.C.§ 14408.

As posed in Ash v. Cort: is the cause of action one traditionally relegated to state law so that it would be inappropriate to infer a cause of action based solely on federal law? The related law in the states varies widely in this regard, supporting an argument that the issue is not a matter best left to the State Courts nor a matter that is peculiarly best situated in the state court. Congress has made an Act which addresses the culmination point of various abuses, and said focal point has seen any legality of assisted suicide decisively forestalled in the decision by the Court in Washington v. Glucksberg, 521 U.S. 702, 117 S.Ct. 2258 (U.S.Wash.,1997) that any claimed right to assistance in

committing suicide is not fundamental liberty interest, that the State of Washington's assisted-suicide ban did not violate due process, and that an asserted right to commit suicide, which itself includes right to assistance in doing so, has no place in nation's traditions, for purposes of substantive due process analysis. No statutes allowing assisted suicide since enacted. Because the various abuses may now be reined in, and because of the variation of sources and difference in relevant law from state to state, private right of action creates ability actross the board and under the circumstances does so very efficiently. The matter is not one traditionally relegated to state law; also, it does not benefit from state law, and in fact has been promulgated in part to formulate a solution to what is found to be questionable or errant state law. Such contradictory state law is feebly matched by various corresponding state statutes, but the overall visage is variegated and in no way does it stand as a traditional role, nor does a relegating exist. It is entirely appropriate to infer a cause of action based on federal law because, inter alia, the federal issue is one which attains authority through control over a substantial source of funding, and which makes it's forbiddance as to a singular and conclusive aspect of the wrong, whereas the matter is scattered in the various states in an assortment of laws, few or none of which

attack any of the issues addressed, at the source of funding. Further, Medicare cannot be expected to take up the enforcement, beyond the promulgation of rules and the implements already in place for accosting of fraud and such. The ASFRA makes no structure that will enforce its measures. When administrative remedial machinery does not exist to vindicate an affirmative right there can be no objection to an independent cause of action in the Federal Courts. Lloyd v. Regional Transportational Authority, 548 F.2d 1277 (7th Cir. 1977)

Comprehensive Drug Abuse Prevention and Control Act

Plaintiff consistently raised and argued that violation of this statute has occurred, and that the circumstances allow for a private right of action.

The Court in Gonzales v. Oregon, 126 S.Ct. 904 (2006) has held that the Comprehensive Drug Abuse Prevention and Control Act as amended by the Controlled Substance Act "did not authorize Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide, as authorized by ODWDA." concluding, inter alia, that the "Requirement of Controlled Substances Act (CSA) that

Schedule II drugs be dispensed pursuant to written prescription of a practitioner ensures that patients use controlled substances under the supervision of a doctor, so as to prevent addiction and recreational abuse; as a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses, but to read prescriptions for assisted suicide as constituting "drug abuse" under the CSA is discordant with the phrase's consistent use throughout the statute, as well as its ordinary meaning. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 309(a), 21 U.S.C.A. § 829(a)."

Plaintiff requests this Court for a determination that said statute creates a private right of action in certain instances, notably, where a physician has falsely permitted a prescribing of a disabling narcotic through concealing and/or conspiracy of silence, misdiagnosis, omission of testing, and similar fraud, or through knowing use of a revoked, or invalid advance health directive. The statute in section 21 U.S.C.§ 843. Prohibited acts makes it unlawful to:

"

(a) Unlawful acts

It shall be unlawful for any person knowingly or intentionally—
(1) . . .

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;
(4) . . . .
(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this subchapter or subchapter II of this chapter, or . . . "

In 21 U.S.C. § 847. Additional penalties Congress provides that "Any penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. "

It is noteworthy that the trial Court erroneously states in the memorandum (p.9) that there have "never been any criminal charges in connection" with this case, but plaintiff has related in this or the concurrent cases his timely requests to law enforcement, attorney generals, mid-level agencies, the Federal Bureau of Investigation, and numerous attorneys, for police action, all to no avail. The Trial Court has stated that no precedent exists for a private right of action, but the fact that no published cases address the A.S.F.R.A. at all, is supportive of a finding of right of action.

Petitioner in regard to both of the above arguments is able to bring forth additional authorities and to refute those advanced in the opinions. Petitioner has notified numerous prospective amicus curiae of the existence of the issues in this appeal and anticipates participation of one or more of them.

For all of the above reasons, plaintiffs request the Court's determination that a private right of action is intended, implied, and therefore found viable under the statutes and circumstances in plaintiffs' complaint, and a directive to argue regarding any specific of said statutes.

B. Has The Third Circuit Abused Discretion By Misapprehending The Viability Of Plaintiff's Federal Question Causes Of Action Under 42 U.S.C.§ 1983, 42 U.S.C.§ 1985(2), 42 U.S.C.§ 1985(3), and 42 U.S.C.§ 1986 ?

The Court Is Requested To Review An Issue Regarding State Enforcement Of Agreement Between Parties.

In considering a motion to dismiss, the court asks only whether the pleadings are sufficient to establish a

claim, not whether the plaintiff could find evidence to support his pleadings. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir.1986).

Plaintiffs' claim, as stated above, that the actions in the complaint pursuant to 42 U.S.C.§ 1983, 42 U.S.C.§ 1985(2), 42 U.S.C.§ 1985(3), and 42 U.S.C.§ 1986, are expressly and substantially alleged in the complaint. This reasoning includes the basis that a count for conspiracy has been presented from the start and that the pervasiveness of said conspiracy is clear in the allegations. The whole record may be looked to for purpose of curing defective averment of jurisdiction. Troupe v. Chicago, D. & G. Bay Transit Co., C.A.2 (N.Y.) 1956, 234 F.2d 253. Leave to amend was abundantly warranted and in fact required because the district court failed to order or direct an amended complaint in the first place.

Petitioner is now found to not set out sufficient facts to show that a racial or other class-based invidious discriminatory animus lay behind the appellees' alleged actions and that the alleged coconspirators "intended to deprive the victim of a right guaranteed by the Constitution against private impairment." Brown v. Philly Morris Inc., 250 F.3d 789, 805 (3d Cir. 2001). and to be unable to make a § 1986 claim because a § 1985 violation is a pre-requisite. 42 U.S.C. § 1986.

The Third Circuit here has abused discretion in a) not allowing amendment despite their language of "has not set out sufficient facts," and b) in failing to perceive plaintiffs' claims in the pleadings alleging that class-based animus was overt and successively so rgharding religion and age, at the minimum.

Civil rights suit was appropriate for application of this section which expressly allows amendment of defect to jurisdictional allegations; thus, plaintiff would be given opportunity to amend jurisdictional allegations in those parts of his complaints which referred to defendant borough. Rotolo v. Borough of Charleroi, C.A.3 (Pa.) 1976, 532 F.2d 920.

A private right of action has clearly been intended in 42 U.S.C.§ 1983, 42 U.S.C.§ 1985(2), 42 U.S.C.§ 1985(3), and 42 U.S.C.§ 1986 , and so these are not worthy of sua sponte dismissal, yet both §1985 counts are attempted to be affirmed with this sua sponte objection for lack of class based animus. Plaintiffs furthermore validly bring forth a number of statutory violations, which have been found by the Courts to intend or otherwise sufficiently allow a private right of action. Plaintiffs' many statutory violations pursuant to § 1983 are valid beyond doubt, perhaps even as supported by their viability as negligence per se. Legal discretion vested in the trial court does not extend to a refusal by it to apply well-settled principles of law to a conceded state of facts.

Union Tool Co. v. Wilson, 42 S.Ct. 427 (U.S.Cal.,1922). Said violations include, based on the allegations of the complaint, violations of the Age Discrimination Act 42 U.S.C.§ 6100 et seq., 42 U.S.C§3001 et seq. Programs for older americans; the Americans with Disabilities act of 1990, 42 U.S.C.§ 12101 et seq., and 42 U.S.C.§13981 : the Violence against women act of 1994, all of which create rights, and intend a private right of action, arguably, in regard to the issues of this case. Plaintiff, due to constraints of space requests the Court's order requiring plaintiff to present a brief on this argument.

Further, the said civil rights causes of action other than § 1983 do not require allegations of deprivals of rights by state actors. Defendants ignored this claim in their pleadings, the district court ignored this issue in the opinion, and the Third Circuit raised a sua sponte issue instead. In regard to § 1985(3), the Court lay down the law in Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790 (1971) stating "On their face, the words of the statute fully encompass the conduct of private persons." accord United States v. Harris, 106 U.S. 629, 1 S.Ct. 601 (1882), (statute was 'not limited to take effect only in case of [state action],' ... but 'was framed to protect from invasion by private persons, the equal privileges and immunities under the laws, of all persons and classes of persons." Harris, 106 U.S. at 637, 1 S.Ct. at 607, 27 L.Ed. at 293.

To invoke district court's federal question jurisdiction, it must appear from face of complaint that cause of action is either created by federal law or that federal law is essential to state law cause of action. 28 U.S.C.A. § 1331. Lake v. First Nationwide Bank, 156 F.R.D. 615. This has plainly occurred.

Plaintiffs state, beginning in the jurisdictional statement of the complaint, their invocation of 28 U.S.C. §1331, asserting 42 U.S.C. §1983. Also stated (in addition to others stated elsewhere in the complaint): is violation 21 U.S.C.A..§ 801 et seq (Comprehensive Drug Abuse Prevention and Control Act), 42 C.F.R.§ 14402 , and "statutes enacted by Congress regarding medical care and nursing care" including 42 C.F.R.§ 483.10 et seq., with a statement that "These statutes each show an intent by Congress to enable a cause of action for the acts or omissions which they refer to." The Count pursuant to 42 U.S.C. §1983 includes an allegation of " violation of statutes of Congress," alleging causation thereby of deprival "of due process, life, liberty, and/or property, " and that such "caused injury to plaintiffs."

Plaintiff also opposes the Third Circuit's claim that the defendant hospital, and the physicians and attorney and estate administrators, can in no way be a state actor or have acted under color of law. The circuit court refutes the petitioner's argument claiming that receipt of

public funds and 6 other reasons adding up to qualification as a "quasi-public' hospital, ignoring the circumstances of the alleged harms where personnel acted in concert, pursuant to laws, rules, and procedures of the Commonwealth and, whether physicians and hospital, attorney, or estate administrators who had sworn an oath to the Register of Wills of Chester County, and/or sworn to uphold the laws of the Commonwealth and/or considered officers of the Courts, and thus stood as authorities over the plaintiffs due to an imposing stature, under state law and utilized said stature, and authority, inter alia, to impress on plaintiffs, bolstered with all manner of "custom and usage," the wrongful activities, which they intended to harm plaintiffs. This activity falls within the "symbiotic relationship test" and arguably falls within the "close nexus test," and stands as "so entwined with governmental policies or so impregnated with a governmental character as to become state action within the Civil Rights Act." Klavan v. Crozer-Chester Medical Center, 60 F.Supp.2d 436 (E.D.Pa.,1999) The wrongdoers were clearly "clothed with authority of state law." Brogan v. La Salle University, 70 F.Supp.2d 556 (E.D.Pa.,1999). Civil rights statutes can be constitutionally utilized to reach private conduct of defendants under Congress' power to enforce section five of the Fourteenth Amendment. 42 U.S.C.A. § § 1981, 1985; U.S.C.A.Const. Amend. 14.

Com. of Pa. v. Local Union No. 542, Intern. Union of Operating Engineers, 347 F.Supp. 268 (E.D.Pa.,1972)

Furthermore the state-enabled authority, expressly utilized to direct action including repeated improper assertions of the advanced health directive and power of attorney, constituted private, individual conduct constituting state action under Sament v. Hahnemann Medical College and Hospital of Philadelphia, 413 F.Supp. 434 (E.D.Pa.,1976) because (1) a state court was enforcing agreements affecting private parties (living will, powers of attorney, and deceased husband's estate), (2) the state thus, in a pattern or interwoven set of circumstances, was significantly involving itself with private parties, and (3) there was private performance of government function (including the wrongful enablement of living will, which was an overt and falsely "legal" substitution of facility and estate parties' performance, for government performance that was warranted but avoided. Pennsylvania law requires approval of a famIly member and two physicians prior to removing support from a comatose patient, never mind an alert and unwilling one. When the state creates a system permitting private parties to substitute their judgment for that of a state official or body, a private actor's mere invocation of state power renders that [private] party's conduct actionable [as a joint actor with the state] under § 1983." Cruz v. Donnelly, 727 F.2d 79, 82 (3d Cir.1984). The Chester

County Register of Wills and Orphns Court was, at all relevant times, enforcing an agreement affecting private parties Marjorie C. Schneller, James D. Schneller, AHD surrogate Marjorie Zitomer; power of attorney Richard Schneller, and their estate attorney, T. Sergeant Pepper Esquire, and his firm, who is alleged to have falsely put forth his inclusion as the eldercare advisor and to have occluded the actual absence of such. The agreement provided for a three way administration of the estate of George H. Schneller, but carried with it numerous legal implications, none of them explained to the plaintiffs, and yet utilized in order to affect the medical treatment of spouse Marjorie C. Schneller. This was an entwining with governmental policies and impregnating with a governmental character as to become state action within the Civil Rights Act as described in Klavan, which incidentaly was a case against the same hospital as this. The future of that estate and the subsequent Marjorie C. Schneller estate revealed a larger picture to this state-enforced agreement with unmistakable authority of the state Court exercised regularly despite it's and certain parties' partiality, egregiousness, and impropriety.

Plaintiffs believe the Third Circuit has abused discretion warranting reversal or vacating, at the least with leave to amend. Plaintiffs claim that a right of action exists cumulatively. The above described

occurrences, inter alia, involved continual multi-level federal funding, and took place in a scenario which by it's nature is deeply affected by interacting violations of federal law, and the entire scenario clothed in the authority of state law.

Petitioner as stated requests especially, the Court's review of the matter of state-enforced agreements, along with or separate from private performance of state function, as sufficient for federal question jurisdiction over claims for civil rights and for conspiracy to deprive rights.

C. Whether The Court Of Appeals and The District Court Have Decided In Conflict With Numerous Decisions of the Circuit Courts, and of This Court, Warranting Reversal, In The Matter Of Jurisdiction Over Federal Questions In Plaintiff's Complaint, and Supplemental Jurisdiction, and In Doing So Without Leave To Amend ?

Plaintiff's right to remedy for injury and full and fair hearing, remain at stake in this appeal, repeatedly inflicted with a furtherance of the ills enumerated in the

complaint itself. A deprival of constitutional rights is inflicted on plaintiff in the lower Courts' decisions, and a non-uniformity in the Court's decisions has occurred in upholding of them.

Appeal proved to be a rubber stamp despite the level of error, and fatal results of the error. Mere error of law does not deprive individual of property without due process of law or raise a constitutional issue if adequate provision for review of offending judicial decision is available. Diggs v. Pennsylvania Public Utility Commission, 180 F.2d 623 (C.A.3.Pa.,1950)

Due process does not require right to appellate review but once extended there may not be imposed upon it discriminatory limitations which violate right to equal protection of laws. In re Brown, 439 F.2d 47 (C.A.3.V.I.,1971) It is the United States Appeals Court in this case that has caused the right of review to be replaced by a deprival of right to due process and a deprival of a just and fair determination free of bias and partiality. The appearance of justice is foremost element of justice In re Murchison, 75 S.Ct. 623 (U.S.Mich.,1955) The appearance of justice left the proceedings as soon as the District Court denied an evidentiary hearing, and attempted to get plaintiff to settle, with the threat of a dismissed case the only alternative, this despite plaintiff's and all present's knowledge that the District Court would be thus

deciding the case in a travesty of justice.

Reasons why reversal by the Court is voluminously supported include:

Failure to File Cross Appeals

The Third Circuit openly ignored plaintiff's request that some issues be waived because they were new issues to the proceeding and yet only raised in response briefs, rather than, at the least, by filing cross appeals. Plaintiffs scrimped and saved in order to afford the appeal, and exercised abundant energy in preserving their arguments for appeal, and so objected aggressively to this disobedience of the rules. These issues include: a claim of untimeliness of the filing of a Notice of Appeal, a claim of lack of standing , a hollow claim of fatality to the case pursuant to state law rules regarding certification of professional liability actions, and a claim that the Court might exercise authority to direct the Clerk to refuse further filings of a litigant.

Plaintiffs therefore would request that the Court order that the above named issues be waived by defendants.

Abuse of Discretion

The Circuit Court has expressly erred in many ways that conflict with general law regarding the issues, including: The threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

Defective allegations of jurisdiction in complaint may be amended at any time. Velandra v. Regie Nationale des Usines Renault, C.A.6 (Mich.) 1964, 336 F.2d 292. Dismissing a case for want of jurisdiction is not favored when alternative basis for jurisdiction exists even if alternative basis was not asserted in the trial court. Fidelity & Cas. Co. v. Reserve Ins. Co., C.A.9 (Cal.) 1979, 596 F.2d 914.

Appellate court is particularly vigilant in reviewing orders dismissing claims alleging civil rights violations; court will not affirm dismissal at pleading stage unless it is readily discerned that facts cannot support entitlement to relief. Lake v. Arnold, 112 F.3d 682, 65 USLW 2717 (C.A.3 (Pa.),1997)

Moreso, the opinions now presented have a marked characteristic of stretching dismissal over greater scope than worthy, applying of one defendant's circumstances to the whole, stretching insufficiencies as to one defendant, to all defendants, and an inappropriate

accumulating of different objections not fatal unto themselves and not worthy of accumulation because of their separateness. See Affirming Opinion p. 8 (applying statute of limitations "in any event, even if" Federal question not present.)

Oral Argument was Omitted

Petitioner was denied oral argument at the choice of the circuit court. Petitioner claims bias and effort to affect the substance of the appeal. The complexity of the case was apparent as was petitioner's command of the fact and law. Questions were obviously present on the part of the circuit justices, yet argument was precluded. Petitioner believes that was so that a predetermined opinion would not be affected by petitioner's adept comments and emphasis, which are the typical effect of argument. This is claimed to be abuse of discretion and stands in reality as a deprival of due process.

These are accentuated by the overt appearance of the opinion to be directly taken from the opinion below, without any real discussion of any of the facts and argument presented by petitioner in support of abuse of discretion and error of law, other than a sentence concerning the A.S.F.R.A.

Gurpreet Kochar M.D. Has Not Been Dismissed

As stated in the memorandum opinion in footnote 4 on page 4, and the affirming opinion on page 6, cardiologist Gurpreet Kochar M.D. did not file a motion to dismiss. The complaint alleges in this regard the concerted efforts of assisted suicide and also specifically, failure to perform cardioversion nor to reveal to plaintiffs nor treat the onset of an aortic stenosis which progressed without hindrance. The Third Circuit abuses discretion in finding this appropriate for a general summary action, which is in fact clearly erroneous, that the complaint does not state a claim nor have jurisdiction. Overt misapplication of law is occurring, and amazingly, the inappropriate cumulativity of different non-fatal dismissal claims is now proclaimed to cause dismissal against a party who did not even raise these issues. Here the Third Circuit has also ignored basic law that overt unfairness supports jurisdiction.

Right to Amendment Circumvented, and Quality of Complaint

The District Court has effectively precluded filing of a new amended complaint or other measure seeking to preserve plaintiffs' rights, and despite absence of any prejudice to doing so. Court of Appeals overturns district

court's denial of motion for leave to file amended complaint only if denial is abuse of discretion. Scattergood v. Perelman, C.A.3 (Pa.) 1991, 945 F.2d 618, rehearing denied. Amendment was undeniably warranted in any instance where jurisdiction appeared in any colorable way present. Rotolo , Aurecchione v. Schoolman Transp. System, Inc., C.A.2 (N.Y.) 2005, 2005 WL 2277538, opinion corrected and superseded 426 F.3d 635.

As to the Savings statute, 42 Pa.C.S.§5355, it only applies up to a year from dismissal and a year had nearly passed. Plaintiffs in the face of silence could in no way be certain that their rights were preserved to re-file despite the Third Circuit's vacating of the prior dismissal of sorts. Silence had ensued after said remand despite the fact that the Circuit Court had vacated with instructions "to grant Schneller leave to file an amended complaint . . " The basis for amendment regarding the strength of jurisdiction was principally if not entirely presented in the allegations, supporting relation back. Now the trial Court has stated (Memorandum p.2) that the filed complaint was the amended complaint, which it is not. Amendment was naturally held back until the motions to dismiss were filed, so that repetitive amending would not burden all parties. The Third Circuit agrees with this misleading by the trial Court, stating (despite the issues' being presented fully in the brief) that "Rather than amend the complaint, Schneller

initiated a wholly new case with an identical complaint." (Opinion page 2). Plaintiffs claim abuse of discretion and request leave to amend. Plaintiff also competently claimed that the relation back doctrine is fully available.

Supplemental Jurisdiction

Supplemental jurisdiction under 28 U.S.C.§1367 has been denied despite conflict with numerous authorities, the greatest of them the fact that federal jurisdiction does exists and it's erroneous deprival stands as great support for §1367 jurisdiction under the circumstances..

Federal courts shall exercise supplemental jurisdiction over pendent claims arising out of the same case or controversy. In Re Prudential Insurance Company America Sales Practice Litigation Agent Actions. 148 F.3d 283, 41 Fed.R.Serv.3d 596 (C.A.3, 1998) , Growth Horizons, Inc. v. Delaware County, Pa., 983 F.2d 1277, 1285 n. 14 (3d Cir.1993).

Moreso, and especially applicable to this case, the Third Circuit abuses discretion in ignoring as did the district court plaintiffs' claim that state court decisions were so patently erroneous and unfair that the trial court was bound to apply "exceptions to the Younger doctrine, [whereunder] federal courts may intervene where state court proceeding is conducted in bad faith or is motivated by a desire to harass, or where a state

statute is flagrantly and patently unconstitutional. Nernberg v. City of Pittsburgh, 50 F.Supp.2d 437 (W.D.Pa.,1999.) Also supportive is prevailing law finding Colorado River abstention inapplicable when the state court will not adequately protect the parties' interests. Flint v. A.P. Desanno & Sons, 234 F.Supp.2d 506(E.D.Pa.,2002)

Plaintiff claims a manifest injustice and obstruction of their causes of action in the State courts. District court would not exercise pendent jurisdiction over homeowner's state law claims against city, in absence of extraordinary circumstances, and in light of fact that under state statute homeowner could transfer her state law claims to state court following dismissal by district court. Rousseau v. City of Philadelphia, 589 F.Supp. 961 (E.D.Pa.,1984) Shaffer v. Bd. Of School Directors of the Albert Gallatin Area Sch. Dist., 730 F. 2d 910, 912 (3d Cir. 1984), Tully v. Mott Supermarkets Inc., 540 F.2d 187, 196 (3d Cir. 1976). Plaintiff clearly claimed circumstances qualifying as extraordinary. Paramount is the fact that the state court decisions are an ongoing gross injustice. It is alleged in the complaint that even without debilitating unwanted doses of narcotics, that Marjorie C. Schneller died as a prisoner of medical diagnoses and lack thereof which kept her bedbound and highly unlikely of transfer at length, callously postponing forever even her most basic rights, to speak and to imbibe, nor of attaining second opinions. Because of the

gross injustice that would result if an innocent man were sentenced to death, O'Dell's substantial federal claims can, and should, receive careful consideration from the federal court with habeas corpus jurisdiction over the case. O'Dell, Petitioner v. Charles Thompson, Warden, Et Al, 502 U.S. 995; 112 S. Ct. 618; 116 L. Ed. 2d 639; 1991 U.S. LEXIS 6766 (1991) citing Gardner v. Florida, 430 U.S. 349 (1977), which held that a defendant is denied due process of law when his death sentence is imposed, at least in part, on the basis of information that he had no opportunity to deny or explain.

Statute of Limitations

Some appellees have claimed that the discovery rule and other means to tolling of the statutes of limitation are inapplicable. Plaintiffs, in addition to their arguments relevant to the opinions also would further argue their claim that continuing violation has occurred in most of their causes, notably, in the civil rights-conspiracy claims, plaintiffs also claim tolling under principles of fairness because of the obstruction and intimidation and retaliation occasioned upon plaintiffs for the efforts to litigate.

Sole living plaintiff James D. Schneller ("plaintiff") also believes that any fulcrum claim of lack of knowledge is supporting of equitable tolling in this case. e.g. Urie v.

Thompson, 337 U.S. 163, 170, 93 L. Ed. 1282, 69 S. Ct. 1018 (1963), in which it was held that "blameless ignorance" on the part of the claimant would justify the tolling of the statute. Schappacher v. United States, 475 F. Supp. 2d 749, 755-56 (S.D. Ohio 2007) (holding that the statute of limitations should not be equitably tolled because plaintiffs made no inquiry into doctor's federal status and there was no evidence that the doctors affirmatively misled the plaintiff). Moreso, courts deciding tolling issues in prisoner claims have repeatedly noted that failure to raise the lack of discovery, knowledge, or legal basis, additionally negated such claims, so raising them must on the contrary afford the party some measure of support (especially under circumstances of obstruction, retaliation, and intimidation.)

Some of the claims based on Acts of Congress[1], intentionally not mentioned in the opinions by the Courts below[2], enjoy limitations of time sufficient for

---

[1] Plaintiffs for instance claimed in the Jurisdictional statement causes of action under including 42 U.S.C.§ 2000a et seq , 42 U.S.C.A. § 2000bb et seq., 42 U.S.C § 10400 et seq. , 42 U.S.C. § 6101 et seq. , 42 U.S.C § 13981 et seq., 42 U.S.C. § 3001 et seq., 29 U.S.C. § 794 , 21 U.S.C.A..§ 802 et seq , and numerous sections of the Criminal Code 18 U.S.C..

[2] see District Court opinion p.4 - "Mr. Schneller also alleges violations of various Long Term Care Facility regulations." This is the only other mention of allegations of violations.

timeliness of the complaint and/or in conjunction with plaintiffs' claims of equitable tolling including equitable tolling (as permissible in conjunction with pendent jurisdiction) due to the egregious unfairness inflicted on plaintiffs in the state Courts.

The Third Circuit decides egregiously also in reciting the district court's patently erroneous finding that Pennsylvania's savings statute is inapplicable due to the presence of torts including bodily injury, where petitioner had cited inarguable authorities for the premise that the savings statute is applied on a count by count basis and thus was appropriate at the least for the counts not constituting actions "for wrongful death or injury," which are numerous. 42 Pa.C.S. § 5535

Negligence per se

Because Pennsylvania recognizes negligence per se as a means of proof of breach of duty, certain of petitioner's claims of right to action based on statutory violations, where seen as insufficient as a private cause of action, nevertheless stand as integral to the claim and thus supportive of Federal question jurisdiction in a cumulative respect.. For instance, the Superior Court in McCain v. Beverly Health and Rehabilitation Services, Not Reported in F.Supp.2d, 2002 WL 1565526 (E.D.Pa.) finds such an aspect to the Medicare Requirements for

Skilled Nursing Facilities, 42 C.F.R.§ 483.01 et seq., which are directly relevant in numerous instances to the Assisted Death claim. Plaintiff has raised this Court's decision in Ash v. Cort, 350 F.Supp. 227 (E.D. Pa.,1972) that civil actions may be implied from criminal statutes designed to protect a specific class.

This appears herein in many issues, and the Court is requested to direct argument on this issue.

Pennsylvania law provided that statute or regulation clearly applies to the conduct of the defendant, the defendant violates the statute or regulation, and the violation proximately causes the plaintiff's injuries. Cecile Industries, Inc. v. U.S., 793 F.2d 97 (C.A.3 (Pa.),1986)

Dismissing a case for want of jurisdiction is not favored when alternative basis for jurisdiction exists even if alternative basis was not asserted in the trial court. Fidelity & Cas. Co. v. Reserve Ins. Co., C.A.9 (Cal.) 1979, 596 F.2d 914.

James Schneller's Right to Represent the Estates

The trial Court has stated in a footnote on page 1 of the memorandum that James Schneller may not represent any other plaintiffs pro se, referring to the Court's finding in a prior appeal No. 07-2268. That

decision was not appealed but the District Court may not cite a non-precedental opinion nor a footnote therein.

The finding that as a non-attorney, James D. Schneller may not appear as an attorney for any other parties, is refutable under the circumstances and Pennsylvania decisions. Petitioner's argument would begin with the fact that James Schneller's capacity to sue on behalf of the one estate, is matched by his capacity to sue on behalf of the Pa.R.C.P. 2202 "parties entitled to relief" under the wrongful death statute, of which in fact he is one and probably the only one. Each of these may constitute a legal question of first impression, however the authority stated by the defendants in concurrent case No. 06-1504, now appeal No. 09-4577, is immaterial and of narrow scope. That decision, Collinsgru v. Palmyra Board of Education, 161 F.3d 225, issued by the Third Ciruit in 1998, found that parents could not represent their son pro se in an action under the "Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (1994 & Supp. 1997) (the "IDEA"). [affirming that] The district court found that it was bound by our decision in Osei-Afriyie v. Medical College of Pa., 937 F.2d 876, 882 (3d Cir. 1991), in which we held that a non-attorney parent could not represent his children in a tort action in federal court." This narrow fact base is, to plaintiffs research, the only pertinent realm to date where any federal Court has determined that a relative may not represent their relative, and these are limited to the

parent-representing-child situation, which is far different from the within circumstance of adult child, who shared the harms.

The extraordinary circumstances of this case, including obstruction, ineffective prior counsel, oppression, and intent to ruin the case in the eyes of prospective counsel, regarding the living and the deceased plaintiffs. are not present in any published decision deciding the claimed doctrine of forbiddance of prosecution by pro se litigants.

Request for Amendment and Reconsideration Warranted Grant of Requested Action

Review of this question was sought because plaintiffs' motion sought concisely, and with abundant support, to forestall a new layer of appeal despite the claimed abundance of jurisdiction and success at alleging numerous valid and timely federal questions and pendent state claims. Court of Appeals generally reviews the district court's denial of reconsideration for abuse of discretion, but, to the extent that the denial is predicated on an issue of law, such an issue is reviewed de novo; to the extent that the district court's disposition of the reconsideration motion is based upon a factual finding, it is reviewed for clear error. Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 50

U.S.P.Q.2d 1665 (C.A.3 (N.J.),1999.) The quantity of error herein discussed warranted reconsideration and vacating or amending of the order.

A new example of abject error of law resulting in unfairness and appearance of injustice, is the factually unsupported trial Court decision that "waiting until after the dismissal of the actions to motion for the dismissal of the non-diversity defendants and for remand is inappropriate.". Appendix entry D. Plaintiffs had stated in pleadings their intent to amend to enable diversity jurisdiction more than once. Courts are enabled to perceive changes in jurisdiction at "all stages" of litigation" Packard v. Provident National Bank, 994 F.2d 1039 (CA3 1993).

Issues of Falseness and Unfairness Abound in this Case

Plaintiffs urgently protested outright falseness in the pleadings but unfortunately, unlike in No. 09-4372 (USSC No. 10-227) and No. 09-4577 (USSC No. 10-120) they did not file any motion for sanctions prior to decision in the District Court nor the Third Circuit to this effect, though the pleadings preserve the actual mistruths and objections to them.

Errant untruthfulness present in the pleadings supports plaintiffs claim of the presence of

untruthfulness throughout the proceedings, that is worthy of the authority of the Court to sanction and admonish, to waive issues and to review de novo.

Costs

The Third Circuit has abused discretion also in their decision to apply costs to petitioner, despite the overt error evident to all concerned, which is overt error of law and partiality.

Relief

Request is respectfully therefore made that jurisdiction be found, and reversal, and for remand for hearing on evidence, especially regarding plaintiff's claims made pursuant to the discovery rule, and equitable tolling due to fraud and concealment, and overt efforts to obstruct and intimidate and retaliate, because the District Court, despite holding argument, did not allow evidence, despite plaintiff's requests to that effect.

Plaintiffs for the above reasons, request, if plaintiffs' pleading of jurisdiction is found defective, leave to amend the complaint in this Court so that a full and proper jurisdiction of the District Court can be plead therein, or remand with instructions to that effect.

Plaintiffs for the above reasons respectfully request in the alternative, remand for findings by the District Court on any issue of federal question jurisdiction deemed needful of such.

Plaintiff respectfully requests sua sponte remand for proceedings on express falseness put forth in pleadings in the District Court and Circuit dockets, and argument before the Court so that this phenomenon in trial and in appeals briefs may be permitted adjudication separate or together with the present record.

VI. CONCLUSION

Much in support of reversal and/or modification of the order appealed from, is the fact that the trial Court has never expressly stated that the case is dismissed, nor has the case been dismissed with prejudice. Evidence of partiality and capricious disregard of facts or law are evident in other issues directly available to the Court, so that, due to constraints on the length of this brief the petitioner may be found to have sufficiently pled their case for the purposes of reversal.

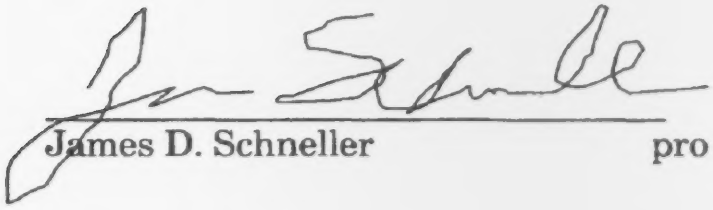
Defective allegations of jurisdiction may be amended, upon terms, in the court of appeals. Clark v. National

Travelers Life Ins. Co., C.A.6 (Tenn.) 1975, 518 F.2d 1167.

Plaintiff for the above reasons respectfully requests grant of certiorari and/or remand for findings by the District Court on any issue of federal question jurisdiction deemed needful of such.

Plaintiff for the reasons stated requests reversal or reversal in part of the affirmance of dismissal of claims pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985(2), and 42 U.S.C. § 1985(3), with findings that plaintiff's claim(s) are worthy, or such similar action deemed appropriate in this regard.

For all of the above reasons, plaintiffs request the Court's determination that a private right of action is intended, implied, and found viable for the statutes and circumstances that are alleged in plaintiffs' complaint, and leave to argue in writing or orally any sections not currently addressed in sufficient manner.



James D. Schneller pro se

Date: October 18, 2010

VII. TEXTS OF PERTINENT STATUTES

United States Code Annotated Currentness
Title 42. The Public Health and Welfare

Chapter 138—ASSISTED SUICIDE FUNDING RESTRICTION

§ 14401. Findings and purpose
§ 14402. Restriction on use of Federal funds under health care programs
§ 14403. Restriction on use of Federal funds under certain grant programs
§ 14404. Restriction on use of Federal funds by advocacy programs
§ 14405. Restriction on use of other Federal funds
§ 14406. Clarification with respect to advance directives
§ 14407. Application to District of Columbia
§ 14408. Relation to other laws

§ 14401. Findings and purpose

(a) Findings
Congress finds the following:
(1) The Federal Government provides financial support for the provision of and payment for health care services, as well as for advocacy activities to protect the rights of individuals.
(2) Assisted suicide, euthanasia, and mercy killing have been criminal offenses throughout the United States and, under current law, it would be unlawful to provide services in support of such illegal activities.

(3) Because of recent legal developments, it may become lawful in areas of the United States to furnish services in support of such activities.
(4) Congress is not providing Federal financial assistance in support of assisted suicide, euthanasia, and mercy killing and intends that Federal funds not be used to promote such activities.
(b) Purpose
It is the principal purpose of this chapter to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual.

14402. Restriction on use of Federal funds under health care programs

(a) Restriction on Federal funding of health care services
Subject to subsection (b) of this section, no funds appropriated by Congress for the purpose of paying (directly or indirectly) for the provision of health care services may be used—
(1) to provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing;
(2) to pay (directly, through payment of Federal financial participation or other

matching payment, or otherwise) for such an item or service, including payment of expenses relating to such an item or service; or

(3) to pay (in whole or in part) for health benefit coverage that includes any coverage of such an item or service or of any expenses relating to such an item or service.

(b) Construction and treatment of certain services

Nothing in subsection (a) of this section, or in any other provision of this chapter (or in any amendment made by this chapter), shall be construed to apply to or to affect any limitation relating to—

(1) the withholding or withdrawing of medical treatment or medical care;

(2) the withholding or withdrawing of nutrition or hydration;

(3) abortion; or

(4) the use of an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(c) Limitation on Federal facilities and employees

Subject to subsection (b) of this section, with respect to health care items and services furnished—

(1) by or in a health care facility owned or operated by the Federal government, or

(2) by any physician or other individual employed by the Federal government to

provide health care services within the scope of the physician's or individual's employment,
no such item or service may be furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.
(d) List of programs to which restrictions apply
(1) Federal health care funding programs
Subsection (a) of this section applies to funds appropriated under or to carry out the following:
(A) Medicare program
Title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].
(B) Medicaid program
Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].
(C) Title XX social services block grant
Title XX of the Social Security Act [42 U.S.C. 1397 et seq.].
(D) Maternal and child health block grant program
Title V of the Social Security Act [42 U.S.C. 701 et seq.].
(E) Public Health Service Act
The Public Health Service Act [42 U.S.C. 201 et seq.].
(F) Indian Health Care Improvement Act
The Indian Health Care Improvement Act [25 U.S.C. 1601 et seq.].
(G) Federal employees health benefits program
Chapter 89 of title 5.
(H) Military health care system (including Tricare and CHAMPUS programs)
Chapter 55 of title 10.

(I) Veterans medical care
Chapter 17 of title 38.
(J) Health services for Peace Corps volunteers
Section 2504 (e) of title 22.
(K) Medical services for Federal prisoners
Section 4005 (a) of title 18.
(2) Federal facilities and personnel
The provisions of subsection (c) of this section apply to facilities and personnel of the following:
(A) Military health care system
The Department of Defense operating under chapter 55 of title 10.
(B) Veterans medical care
The Veterans Health Administration of the Department of Veterans Affairs.
(C) Public Health Service
The Public Health Service.
(3) Nonexclusive list
Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1) or the application of subsection (c) of this section to the facilities and personnel specified in paragraph (2).

§ 14403. Restriction on use of Federal funds under certain grant programs

Subject to section 14402 (b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress to carry out subtitle B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000

[42 U.S.C. 15021 et seq., 15061 et seq., 15081 et seq.] may be used to support or fund any program or service which has a purpose of assisting in procuring any item, benefit, or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

§ 14404. Restriction on use of Federal funds by advocacy programs

(a) In general
Subject to section 14402 (b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress may be used to assist in, to support, or to fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of–
(1) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;
(2) compelling any person, institution, governmental entity [1] to provide or fund any item, benefit, program, or service for such purpose; or
(3) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) List of programs to which restrictions apply

(1) In general

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Protection and advocacy systems under the Developmental Disabilities Assistance and Bill of Rights Act of 2000

Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(B) Protection and advocacy systems under the Protection and Advocacy for Mentally Ill Individuals Act

The Protection and Advocacy for Mentally Ill Individuals Act of 1986 [2] [42 U.S.C. 10801 et seq.].

(C) Protection and advocacy systems under the Rehabilitation Act of 1973

Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e).

(D) Ombudsman programs under the Older Americans Act of 1965

Ombudsman programs under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

(E) Legal assistance

Legal assistance programs under the Legal Services Corporation Act [42 U.S.C. 2996 et seq.].

(2) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1).

§ 14405. Restriction on use of other Federal funds

(a) In general
Subject to section 14402 (b) of this title (relating to construction and treatment of certain services) and subsection (b) of this section, no funds appropriated by the Congress shall be used to provide, procure, furnish, or fund any item, good, benefit, activity, or service, furnished or performed for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) Nonduplication
Subsection (a) of this section shall not apply to funds to which section 14402, 14403, or 14404 of this title applies, except that subsection (a) of this section, rather than section 14402 of this title, shall apply to funds appropriated to carry out title 10 (other than chapter 55), title 18 (other than section 4005 (a)), and chapter 37 of title 28.

§ 14406. Clarification with respect to advance directives

Subject to section 14402 (b) of this title (relating to construction and treatment of certain services), sections 1395cc (f) and

1396a (w) of this title shall not be construed–

(1) to require any provider or organization, or any employee of such a provider or organization, to inform or counsel any individual regarding any right to obtain an item or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of the individual, such as by assisted suicide, euthanasia, or mercy killing; or

(2) to apply to or to affect any requirement with respect to a portion of an advance directive that directs the purposeful causing of, or the purposeful assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

§ 14407. Application to District of Columbia

For purposes of this chapter, the term "funds appropriated by Congress" includes funds appropriated to the District of Columbia pursuant to an authorization of appropriations under title V of the District of Columbia Home Rule Act and the term "Federal government" includes the government of the District of Columbia.

§ 14408. Relation to other laws

The provisions of this chapter supersede other Federal laws (including laws enacted after April 30, 1997) except to the extent such laws specifically supersede the provisions of this chapter.

NOT PRECEDENTAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 09-3855

James D. Schneller, Heirs & Beneficiaries of Marjorie C. Schneller, by James D. Schneller, Trustee Ad Litem; Estate Of Marjorie Schneller, by and through James D. Schneller, Trustee Ad Litem; Marjorie Zitomer, Executrix of the Estate Of Marjorie Schneller; Estate of George H. Schneller, by and through Personal Representative James D. Schneller

Petitioner

v.

Crozer Chester Medical Center, dba Taylor Hospital And Crozer Keystone Health System; Suburban Pulmonary Medicine And Principals; Daniel Dupont, D.O.; E. Heffelfinger, D.O.; Gerald Meis, D.O.; Gurpreet Kochar, M.D.; Lalitha Gurijala, M.D.; Marjorie Zitomer; G. Richard Schneller; T. Sergeant Pepper, Esquire; Herman Mcgill, M.D.; Hepburn, Wilcox, Hamilton & Putnam, LLP

Respondents

James D. Schneller, Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania

(D.C. Civil Action Nos. 2-06-cv-00698 and 2-08-cv-01479)

District Judge: Honorable Lawrence F. Stengel

Submitted Pursuant to Third Circuit LAR 34.1(a)

July 20, 2010

Before: BARRY, AMBRO and COWEN, Circuit Judges

(Opinion filed: July 20, 2010)

Case: 09-3855 Document: 003110222513 Page: 2 Date Filed: 07/20/2010

OPINION

PER CURIAM

Pro se appellant James Schneller appeals from an order of the District Court dismissing his complaint for lack of subject matter jurisdiction. For the following reasons we will affirm the judgment of the District Court.

I.

In February 2006, Schneller filed a pro se action against, inter alia, various health care institutions and providers, his brother, a lawyer, and a law firm, alleging violations of his civil rights, breach of contract, negligence, malpractice, and violations of various state and federal statutes in connection with his mother's death in 2002. See Civil Action E.D. Pa. No. 06-00698. The District Court dismissed the action based on lack of jurisdiction before service was perfected, but we vacated the dismissal on the ground that Schneller should have been given an opportunity to amend his complaint. Schneller et al. v. Crozer Chester Medical Center, 276 F. App'x. 169, 171 (3d Cir. 2008). Rather than amend the

complaint, Schneller initiated a wholly new case with an identical complaint. See Civil Action No. 09-1479. The defendants filed motions to dismiss in the latter case; the District Court construed them as applying to both cases. The District Court granted the defendants' motions and dismissed both complaints for lack of subject matter jurisdiction.

Schneller filed a motion for reconsideration, which the District Court denied by order entered June 26, 2009. On July 27, 2009, Schneller filed a motion for leave to appeal in

forma pauperis. The motion was granted on August 3, 2009, and on September 29, 2009, Schneller filed a notice of appeal.

II.

We have jurisdiction under 28 U.S.C. § 1291.[3] When reviewing an order dismissing a claim for lack of

---

[3] Certain of the appellees argue that we do not have jurisdiction over this appeal Because Schneller's notice of appeal was untimely filed. A notice of appeal in a civil case "must be filed with the district clerk within 30 days after the Judgment or order appealed from is entered." Fed. R. App. P. 4(a)(1)(A). This 30-day limit is mandatory and jurisdictional. Bowles v. Russell, 551 U.S. 205, 209-10 (2007). The order Schneller seeks to appeal was entered June 26, 2009. Schneller's motion for leave

subject matter jurisdiction, we exercise plenary review over legal conclusions and review findings of fact for clear error. See White-Squire v. United States Postal Service, 592 F.3d 453, 456 (3d Cir. 2010). We may affirm the District Court on any grounds supported by the record. Kossler v. Crisanti, 564 F.3d 181, 186 (3d Cir. 2009).

III.

Federal courts have limited jurisdiction, and they may only decide cases as authorized by Congress or the Constitution. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994). To establish diversity jurisdiction under 28 U.S.C. §1332(a), the party asserting jurisdiction must show that there is complete diversity of

3

citizenship among the parties and an amount in controversy exceeding $75,000. 28 U.S.C. § 1332(a). The District Court found no basis for diversity jurisdiction because Schneller and eleven of the defendants were residents of Pennsylvania. Id.; see Mennen Co. v. Atl.

---

to appeal in forma pauperis, which we construe as a notice of appeal, was filed July 27, 2009, 31 days later. See L.A.R. 3.4 ("The court will deem an application for leave to appeal in forma pauperis . . . to be a notice of appeal if no formal notice has been filed."). However, Schneller's appeal was timely filed because the thirtieth day fell on a Sunday, and Schneller's notice of appeal was filed on Monday, the next business day. See Fed. R. App. P. 26(a)(1)(3).

Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) ("[J]urisdiction [under § 1332] is lacking if any plaintiff and any defendant are citizens of the same state."). Schneller has provided no argument or evidence to suggest otherwise. See Packard v. Provident Nat. Bank, 994 F.2d 1039, 1045 (3d Cir. 1993) ("The person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of the litigation."). Accordingly, we agree with the District Court that it lacked diversity jurisdiction.

We also agree with the District Court that the Assisted Suicide Funding Restriction Act of 1997 (the "Act"), 42 U.S.C. § 14401, et seq., does not provide a basis for federal question jurisdiction under 28 U.S.C. § 1331. Federal question jurisdiction arises where federal law creates the cause of action, or where the complaint, on its face, poses a federal question. Club Comanche, Inc., v. Gov't of Virgin Islands, 278 F.3d 250, 259 (3d Cir. 2002). "The question whether a statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction." Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 15 (1979). Thus, "what must ultimately be determined is whether Congress intended to create the private remedy asserted." Id. at 15-16. The stated purpose of the Act is "to continue current Federal policy by providing explicitly that federal funds may not be used to pay for items and services (including

assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual." 42 U.S.C. § 14401(b). Schneller claims that certain of the appellees misapplied funds appropriated by Congress, in violation of the Act, for the purpose of assisting in causing the death of his mother by euthanasia, mercy killing and assisted suicide. Even if Schneller's claims had a basis in fact, there is nothing in the structure or language of the Act "either expressly or by implication," that shows any intent by Congress to establish a private cause of action. Transamerica Mortgage Advisors, 444 U.S. at 15.

On appeal, Schneller argues that the District Court overlooked as a basis for federal question jurisdiction his claims under the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. § 801, et seq., and claims based on statutes enacted by Congress regarding medical care and nursing care, including Medical Requirements for Skilled Nursing Facilities, 42 C.F.R. § 483.10 et seq.. The Comprehensive Drug Abuse Prevention and Control Act is a statute enforceable only by the Attorney General and, by delegation, the Department of Justice. See 21 U.S.C. § 871. There is no basis for civil liability arising out of this statute. Schneller's claims under 42 C.F.R. §§ 483.10, 483.13, 483.15, and 483.25 do not provide a basis for jurisdiction pursuant to § 1331 because they merely set forth the requirements that a facility must meet in order to qualify to participate in Medicare and Medicaid; they do

not confer a private cause of action. Schneller's argument that his state law claims based on negligence per se somehow support a finding of federal question jurisdiction "in a cumulative respect" is

5

unpersuasive and unsupported by law. (Appellant's Brief 14.)

Schneller's civil rights claims under 42 U.S.C. §§ 1983, 1985, and 1986 do contemplate a private cause of action and therefore confer subject matter jurisdiction on the court; however, we agree with the District Court that his § 1983 claim fails because Schneller failed to demonstrate that the alleged violations were committed by a person acting under color of state law. See American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999) ("To state a claim for relief in an action brought under § 1983, respondents must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law."). In his brief on appeal, Schneller concedes that "there are no state actors of any clearly defined sort in this action," but continues to press his argument that the private hospital appellees are state actors because they receive public monies and tax benefits, they are subject to state and federal regulation, and their actions are "so entwined with governmental policies . . . as to become state action within the Civil Rights Act." (Appellant's Brief 22.) This argument has been considered and repeatedly rejected by

the Supreme Court in similar cases. See Blum v. Yaretsky, 457 U.S. 991, 1010-11 (1982) (rejecting the argument that state subsidization of a private nursing home facility combined with the state licensing and regulation, converted acts of the homes into state action); Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982) (finding that a civil rights action by former teachers against a private school failed for lack of "state action," even where "virtually all of the school's income was derived from government funding"); see

6

also Hodge v. Paoli Memorial Hospital, 576 F.2d 563 (3d Cir. 1978). We agree with the District Court that Schneller has not demonstrated that "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974).

Schneller argues that the District Court should not have dismissed his complaint without giving him the opportunity to amend the allegations in his § 1983 claims. If a complaint is vulnerable to dismissal for failure to state a claim, a district court must first permit the plaintiff a curative amendment, unless amendment would be "inequitable or futile." Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). We agree with the District Court's conclusions concerning Schneller's § 1983 claims. Because Schneller could not present additional

information that would transform his allegations into viable claims, we conclude that amendment would be futile and thus will affirm the District Court's judgment as to these claims.

Schneller also argues that the District Court ignored his claims under § 1985 and § 1986. Schneller's § 1985 claim could not survive dismissal because he has not set out sufficient facts to show that a racial or other class-based invidious discriminatory animus lay behind the appellees' alleged actions and that the alleged coconspirators "intended to deprive the victim of a right guaranteed by the Constitution against private impairment." Brown v. Philly Morris Inc., 250 F.3d 789, 805 (3d Cir. 2001). Schneller cannot state a § 1986 claim because a § 1985 violation is a pre-requisite. 42 U.S.C. § 1986. Because

7

Schneller's federal claims were all dismissed, the District Court did not abuse its discretion by refusing to exercise supplemental jurisdiction over Schneller's state law claims. See 28 U.S.C. § 1367(c)(3). In any event, even if Schneller otherwise stated a claim under §§ 1983, 1985 or 1986, we agree with the District Court that these claims and the majority of Schneller's state law claims are barred by the governing two-year statute of limitations.[4] See Lake v. Arnold, 232 F.3d 360, 368 (3d

[4] The only claims not barred by the statute of limit-ations were Schneller's breach of contract claims, over which

Cir. 2000) (holding that actions arising under §§ 1983, 1985 and 1986 are subject to the statute of limitations prescribed for personal injury actions in the state in which the relevant events occurred); 42 Pa. C.S.A. § 5524(2), (7) (providing that personal injury, negligence, and intentional tort actions in Pennsylvania must be commenced within two years). [5]

We also agree that 42 Pa. C.S. § 5535 does not provide a basis for jurisdiction in this case because it specifically excludes actions for damages "for injury to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another." 42 Pa. C.S. § 5535(2).

IV.

Finding unpersuasive any of Schneller's arguments, we will affirm the decision of the District Court. The parties' outstanding motions are denied.

---

the District Court declined to exercise supplemental jurisdiction.

[5] Because Schneller's claims were properly dismissed for lack of jurisdiction or failure to state a claim, we disagree with Schneller that it was an abuse of discretion for the District Court to dismiss all claims against all defendants, including Gurpreet Kochar, who had not filed a motion to dismiss. (Appellant's Brief 17.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 09-3855

James D. Schneller, Heirs & Beneficiaries of Marjorie C. Schneller, by James D. Schneller, Trustee Ad Litem; Estate Of Marjorie Schneller, by and through James D. Schneller, Trustee Ad Litem; Marjorie Zitomer, Executrix of the Estate Of Marjorie Schneller; Estate of George H. Schneller, by and through Personal Representative James D. Schneller

Petitioner

v.

Crozer Chester Medical Center, dba Taylor Hospital And Crozer Keystone Health System; Suburban Pulmonary Medicine And Principals; Daniel Dupont, D.O.; E. Heffelfinger, D.O.; Gerald Meis, D.O.; Gurpreet Kochar, M.D.; Lalitha Gurijala, M.D.; Marjorie Zitomer; G. Richard Schneller; T. Sergeant Pepper, Esquire; Herman Mcgill, M.D.; Hepburn, Wilcox, Hamilton & Putnam, LLP

Respondents

James D. Schneller, Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania

(D.C. Civil Action Nos. 2-06-cv-00698 and 2-08-cv-01479)

District Judge: Honorable Lawrence F. Stengel

Submitted Pursuant to Third Circuit LAR 34.1(a)

July 20, 2010

Before: BARRY, AMBRO and COWEN, Circuit Judges

(Opinion filed: July 20, 2010)

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on July 10, 2010. On consideration whereof; it is now hereby

ORDERED and ADJUDGED by this Court that thc judgment of the District Court entered March 19, 2009, be and the same is hereby affirmed. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: 20 July 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES D. SCHNELLER, et al.,

CIVIL ACTION .

Plaintiffs

v.

NO.06-0698

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

JAMES D. SCHNELLER, et al CIVIL ACTION

Plaintiffs

v.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED March 19, 2009

ORDER

AND NOW, this 19th day of March, 2009, upon consideration of the defendants' motions to dismiss filed in civil action No. 08-1479 (Documents# 24, 27, 35) the plaintiff's responses thereto (Documents#43, 44, 45), the defendants' reply brief, (Documents#48) and after a status hearing with all parties present, it is hereby ORDERED that the motions are GRANTED in their

entirety.

IT IS FURTHER ORDERED that all remaining motions in these cases are DENIED as moot. The Clerk of Court is directed to mark both of these actions CLOSED for all purposes.

BY THE COURT

_____/s/_____
LAWREMCE F STENGEL, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES D. SCHNELLER, et al., CIVIL ACTION .

Plaintiffs

v.

NO.06-0698

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

JAMES D. SCHNELLER, et al CIVIL ACTION

Plaintiffs

vi.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED March 19, 2009

MEMORANDUM

STENGEL, J. March 19, 2009

Almost four years after the death of his elderly mother on March 31, 2002, James D. Schneller and

allegedly four other plaintiffs[1] filed *a pro se* action against several defendants[2] whom be claims are legally responsible. The genesis of the case appears to be medical and legal malpractice as a result of the allegedly negligent services rendered to Mr. Schneller's parents during the last few months of their lives. In fact, in the paragraphs introducing ten of the twelve defendants, the plaintiff indicates that 'this action is an action in

---

[1] These plaintiffs include: (1) Heirs and beneficiaries of Marjorie C. Schneller, by James D. Schneller, trustee *ad litem;* (2) Estate of Marjorie Schneller, by and through James D. Schneller, trustee *ad litem;* (3) Marjorie Zitomer executrix of the Estate of Marjorie Schneller (Miss Zitomer is Mr. Schneller's sister and also a defendant in this action); and (4) Estate of George H. Schneller, by and through personal representative James D. Schneller The Third Circuit noted: "Schneller filed his complaint *prose.* He also purports to represent other persons and entities. Although Schneller is entitled to represent himself pro *se,* he 'may not appear pro Sc in the cause of another person or entity.'" Schneller et al. v. Crozer Chester Medical Center. et al 276Fcd. Appx. 169, *170 fl.t (3d Cm 2008). Accordingly, 1 will refer to Mr. Schneller as the solo plaintiff.

[2] The twelve defendants include: (1) Crozer Chester Medical Center dba Taylor Hospital and Crozer Keystone Health System; (2) Herman McGill, M.D.; (3) Suburban Pulmonary Medicine; (4) Daniel Dupont, D.O.; (5) E. Heffelfinger, D.O.; (6) Gerald Meis, D.O.;(7) Gurpreet Kochar, M.D.; (8) Lalitha Gurijala, MD.; (9) Marjorie Zitomer (10) Richard Schneller (the plaintiff's brother); (11) T. Sergeant Pepper, Esq. and (12) Hepburn Wilcox, Hamilton and Putnam, LLP.

professional liability and intentional tort against this defendant." See Compl. ¶¶ 5-9, 15-16. The only exceptions are in the paragraphs for his brother and sister. Id. ¶¶ 10, l 1 . I dismissed the case based on lack of jurisdiction before service was perfected. See Schneller et al. v. Crozer Chester Medical Center. et al, No.06-0698, 2006 U.S. Dist. LFXIS 21053, *7-8 (E.D. Pa. April 18, 2006). On appeal, the Third Circuit Court of Appeals vacated the dismissal holding that the plaintiff should have been given an opportunity to amend his complaint. Schneller et al. v. Crozer Chester Medical Center. et al., 276 Fed. Appx. 169, *171 (3d Cir. 2008). It appears that the court's holding prompted the plaintiff to open a new case with the identical complaint, rather than amend the previously filed complaint. See Civil Action No.08-1479

The defendants have filed motions to dismiss the latter case. Because the two cases are identical, I will construe these motions as applying to both cases, grant them in their entirety, and dismiss both cases.
2

I. BACKGROUND

In October 2004, Mr. Schneller began a series of actions against these defendants in the Courts of Common Pleas of the Counties of Delaware, Chester, and Montgomery. The cases were dismissed through entries

of judgment of *non pros* for failure to file Certificates of Merit as required by Rule 1042.3 of the Pennsylvania Rules of Civil Procedure. Mr. Schneller unsuccessfully attempted to re-open the cases and/or strike the judgment of *non pros.* He then appealed the cases to the Pennsylvania Superior Court which affirmed without an opinion the entries of judgment. The Pennsylvania Supreme Court denied his petitions for allowance of appeal. Finally, the United States Supreme Court denied the plaintiff's petitions for writ of *certiorari.*

The seventy-eight (78) page complaint contains five-hundred fifty-three (553) paragraphs purporting to provide the basis of the plaintiffs twenty-nine (29) claims:

Count 1A	-	Violation of the Assisted Suicide Funding Restriction Act of 1997
Count 1B	-	Civil Action for Deprivation of Rights
Count 1C	-	Conspiracy to Interfere with Civil Rights Depriving Persons of Rights and Privileges
Count 1D	-	Conspiracy to Interfere with Civil Rights - Obstructing Justice and Intimidating Parties - Battery
Count 1E	-	Neglect to Prevent Deprivation of Rights & Conspiracy for Deprivation of Rights - Failure to Warn
Count 2	-	Breach of Contract
Count 3	-	Breach of Contract
Count 4	-	Fraudulent Inducement of Contracts
Count 5	-	Breach of Confidential Relationship, Fiduciary Relationship and

		Fiduciary Duty
Count 6	-	Wrongful Death
Count 7	-	Survival
Count 8	-	Intentional Tort - Abuse of Power of Attorney
Count 9	-	Intentional Tort Abuse of Advance Health Care Directive
Count 10	-	Negligence Per Se (violation of sixty-five state and federal statutes)
Count 11	-	Battery
Count 12	-	Battery - Lack of Informed Consent
Count 13		Product Liability
Count 14	-	Survival - Negligent and Intentional Infliction of Emotional Distress
Count 15	-	Survival - Conspiracy
Count 16	-	Survival - Punitive Damages
Count 17	-	Professional Negligence - Medical
Count IS	-	Professional Negligence - Attorney
Count 19	-	Slander and Libel
Count 20	-	Fraud and Intentional Misrepresentation
Count 21	-	Conspiracy
Count 22	-	Negligent and Intentional Infliction of Emotional Distress
Count 23	-	Breach of Fiduciary Duty
Count 24	-	Tortious Interference with Present & Prospective Economic Advantage
Count 25	-	Punitive Damages

Mr. Schneller also alleges violations of various Long Term Care Facility regulations, including: 42 C.F.R. § 483.10, 42 C.F.R. § 483.13, 42 C.F.R. § 483.15, and 42 C.F.R. § 483.25.[3] See Compl. ¶ 24.

---

[3] These provisions "contain the requirements that an institution must meet in order to qualify to participate as

There are three (3) groups of related defendants,[4] each of which have filed a motion to dismiss with substantially similar arguments. Accordingly, I will address these motions in concert.

4

II. STANDARD FOR A MOTION TO DISMISS

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted examines the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41,45-46(1957). The factual allegations must be sufficient to make the claim for relief more than just speculative. Bell Atlantic Corp. v. Twombly, 550 U.S. 544,555(2007). In determining whether to grant a motion to dismiss, a federal court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff Id.; see also D.P. Enters. v. Bucks

---

a [skilled nursing facility] in the Medicare program, and as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid." 42 C.F.R. § 483.1(b). These regulations do not confer a private right of action. Accordingly, they provide no basis for jurisdiction pursuant to 28 U.S.C. § 1331.

County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

The Federal Rules of Civil Procedure do not require a plaintiff to plead in detail all of the facts upon which he bases his claim. Conley, 355 U.S. at 47. Rather, the Rules require a "short and plain statement" of the claim that will give the defendant fair notice of the plaintiffs claim and the grounds upon which it rests. Id. The "complaint must allege facts suggestive of [the proscribed] conduct." Twombly, 550 U.S. at 555. Neither "bald assertions" nor "vague and conclusory allegations" are accepted as true. See Morse v. Lower Merion School Dist., 132 F.3d 902,906 (3d Cir. 1997); Sterlin2 v. Southeastern Pennsylvania Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995). The claim must contain enough factual matters to suggest the required elements of the claim or to "raise a reasonable expectation that discovery will reveal evidence of those elements. Phillips V

5

Countv of Allegheny, 515 F.3d224, 234 (3d Cir. 2008) (quoting Twombly, 550 U.S. at 555).

A case maybe also dismissed under Rules 12(b)(1) and 12(h)(3) of the Federal Rules of Civil Procedure "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter...." FED.R.CIV.P. 12(h)(3). Alternatively, a court

---

[4] An exception to this is defendant Kochar who has not filed a motion to dismiss.

choosing not to grant a motion to dismiss for lack of subject matter jurisdiction may, under Rule 12(e), grant a motion for a more definitive statement if "a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading " FED.R.CIV.P. 12(e).

Moreover, courts must liberally construe *pro se* complaints and "apply the applicable law, irrespective of whether [the] litigant has mentioned it by name." Higgins v Beyer, 293 F.sd 683, 688 (3d Cir. 2002). Thus, a plaintiffs complaint, however inartfully pleaded, must be held to a less stringent standard than a formal pleading drafted by an attorney. Estelle v. Gamble, 429 U.S. 97, 106 (1976).

III. DISCUSSION

The defendants argue that the case should be dismissed because this court does not have subject matter jurisdiction. Federal courts are courts of limited jurisdiction, and they may only decide cases as authorized by Congress or the Constitution. District courts have subject matter jurisdiction over federal questions pursuant to 28 U.S.C. § 1331, in which
6
Congress grants courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Federal courts also have subject matter jurisdiction over cases where there is complete diversity of citizenship among the parties and the amount in controversy "exceeds the sum or value of $75,000, exclusive of interest and costs" pursuant to 28 U.S.C. § 1332(a).[5] The requirement of complete diversity means that "jurisdiction is lacking if any plaintiff and any defendant are citizens of the same state." Menan Co. v. Atl. Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) (citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267,2 L. Ed. 435 (1806)).

When a motion to dismiss for lack of subject matter jurisdiction is before a court, "the person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of litigation." Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993). This burden is applicable to cases based on diversity jurisdiction as well, and in such cases a plaintiff must demonstrate complete diversity

---

[5] Title 28 U.S.C. § 1332(a) provides: The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between: (1) citizens of different states' (2) citizens of a state and citizens or subjects of a foreign state; (3) citizens of different states and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state as plaintiff and citizens of a state or of different states.

between the parties and that the amount in controversy requirement has been met. Quaker State Dyeing & Finishing Co.. Inc.. v. ITT Terryphone Corp., 461 F.2d 1140, 1143 (3d

7

Cir. 1972) (citing McSparran v. Weist, 402 F.2d 867, 875 (3d Cir. 1968)).

Here, the plaintiff and eleven defendants are residents of Pennsylvania. There is clearly no diversity of citizenship. Thus, jurisdiction cannot be based on 28 U.S.C. §1332. The defendants, however, also argue that the complaint fails to present a federal question sufficient to confer jurisdiction. Federal question jurisdiction exists in one of two circumstances: (1) where federal law creates the cause of action; or (2) where the complaint poses a substantial federal question. Sodi v. Discover Financial Services, 2004 U.S. Dist. LEXIS 24133, *8 (E.D. Pa. 2004). Here, the plaintiff's alleged bases for federal question jurisdiction fall into two categories: (1) alleged violations of federal statutes and regulations; and (2) alleged civil rights violations.

Mr. Schneller cites several federal statutes and regulations throughout his complaint. of the twenty-nine counts contained in the complaint, however, only five counts attempt to set forth federal causes of action. The first count alleges a violation of the Assisted Suicide Funding Restriction Act of 1997,42 U.S.C. § 14401, *et*

seq. See Compl. ¶91 95-107. The defendants argue that this Act does not create a private right of action, and thus cannot provide the basis for jurisdiction. I agree.

If Congress intends to create a private cause of action under a federal statute, the federal courts should find a private cause of action under the given statute. Transamerica Mortgage Advisors Inc. v. Lewis, 444 U.S. 11,15(1979). Congress' intent is determined by examining "the language or structure of a statute or the circumstances of

8

its enactment." Id. "[W]hether a statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction." Id. If the language of the statute expressly gives a remedy then courts should be wary when they are requested to add an additional remedy that is not expressly provided for in the statute. Id.

The structure and language of this Act do not show any intent by Congress to establish a private cause of action. The purpose of the Act is "to continue current federal policy by providing explicitly that federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual." 42 U.S.C. § 14401(b). Mr. Schneller claims that jurisdiction is proper under this Act because many of the defendants applied funds appropriated by

Congress for the purpose of paying for the provision of health care services, federal fluids under certain grant programs including Medicare and Medicaid, and federal advocacy grants, to pay for, provide and contribute to payment or coverage, for health care items and service furnished for the purpose of causing, and for the purpose of assisting in causing, the death of Marjorie C. Schneller, by euthanasia, mercy killing and assisted suicide. See Compl. ¶ 17. Mr. Schneller's assertion is contrary to law.

The rationale for the enactment of this statute is to prevent federal funds from being used for the criminal and unlawful purpose of assisted suicide. See 42 U.S.C.A. §14401 (a)(2). There have never been any criminal charges in connection with the care

10

and treatment of Marjorie Schneller, and the claims that the defendants engaged in some type of mercy killing are unfounded. Further, no court has found that Title 42 U.S.C. §14401, *et seq.*, creates a private cause of action. Thus, the Assisted Suicide Funding Restriction Act cannot form the basis of subject matter jurisdiction.

The next four counts in the complaint allege the deprivation of civil rights pursuant to 42 U.S.C. §§ 1983, 1985, and 1986. Because they contemplate a private cause of . action, these statutes provide subject matter jurisdiction to the court. Counts lB, 1C, lD, and lE set forth the plaintiffs civil rights claims against the

defendants for alleged violations of his mother's rights guaranteed by the Fourteenth Amendment to the United States Constitution. Count lB contains allegations that the defendants deprived Mrs. Schneller of life, liberty, and property by enforcing her advanced health care directive over Mr. Schneller's objection and causing her death. See Compl. ¶¶ 108-129. Count IC claims that the defendants conspired to deprive Mrs. Schneller of rights and privileges including "freedom of speech, freedom to write and communicate, right to locomotion, family interaction, rights to legal representation, to meaningful family visits, and right to choose her daily regimen and health program." See Compl. ¶¶ 130-155. Count lD alleges that the defendants "conspired for the purpose of impeding, hindering, obstructing, and defeating the due course of justice enjoyed by citizens, with the intent to deny plaintiffs the equal protection of the laws," and that these acts constituted causes of action for obstruction of justice, criminal assault, and criminal maiming. See Compl. ¶¶156-173.

10

Finally, Count IE alleges that the defendants, "having knowledge that any and all of the wrongs conspired to be done, as enumerated in this complaint, were about to be committed, and having power to prevent or aid in preventing the commission of the same neglected or refused so to do." Compl. ¶¶ 174-182.

The Fourteenth Amendment to the U.S.

Constitution provides that 'no State shall...deprive any person of life, liberty, or property, without due process of law..." US Const., Amend. 14, § 1 . The protections of the Fourteenth Amendment do not extend to private conduct abridging individual rights, no matter how unfair that conduct may be. National Collegiate Ath. Ass'n v. Tarkanian, 488 U.S. 179 (1988). It is the duty of this court to ensure that the Fourteenth Amendment is invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains. Brentwood Acad. v. Tennessee Secondarv Sch. Athletic Ass'n, 531 U.S. 288, 296 (2001); Edmonson v. Leesville Concrete Co., 500 U.S. 614, 632 (1991); Blum v. Yaretskv, 457 U.S. 991(1982). If a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, the conduct also constitutes action "under color of state law" for Section 1983 purposes. Brentwood Acad., 53l U.S. at 295 (citing Lugar v. Edmondson Oil Co., 457 U.S. 922(1982)).

Title 42 U.S.C. §1983 authorizes redress for violations of constitutional rights and provides, in pertinent part, that:

> Every person who, under color of any statute, ordinance regulation, custom, or usage, of any State or Territory,

11

> subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

> rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. §1983. By its terms, Section 1983 does not create a substantive right; it merely provides a method for vindicating federal rights conferred by the United States Constitution and the federal statutes that it describes. Baker v McCollan, 4A U.S. 137 (1979). In order to establish a claim under Section 1983, a plaintiff must demonstrate (1) a violation of a right secured by the Constitution and the laws of the United States and that (2) the alleged deprivation was committed by a person acting under color of state law. American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40 (1999).

Here, Mr. Schneller fails to satisfy these requirements. Although a private party may cause a deprivation of a constitutional right, it is subjected to liability under Section 1983 only when it does sounder color of law. FIagg Bros. Inc. *v.* Brooks, 436 U.S. 149, 156(1978). Section 1983 excludes from its reach "merely private conduct," no matter how discriminatory or wrongful. American Mfrs. Mut. Ins. Co., 526 U.S. at 50. The actions alleged here were not performed under color of state law, and the defendants are not and cannot be considered state actors.

Mr. Schneller argues, however, that the defendants "operated under a state-created system permitting

private parties to substitute their judgment for that of a state official and invoked state power." See Compl. Count 1B. He also alleges that some of the

12

defendants receive federal funds. Id. These allegations do not establish that the defendants were acting "under color of law" or were state actors. The traditional exclusive governmental function test requires that a private entity exercise powers traditionally and exclusively reserved to the State, such as holding an election or eminent domain. Wolotskv v. Hulin, 960 F.2d 1331, 1335(6th Cir. 1992). The provision of hospital services is not a traditional public function exclusively reserved for the State. Shannon v. Shannon, 965 F.2d 542, 547 (7th Cir. 1992) (hospital care is not an exclusive prerogative of the State).

When analyzing the exclusive government function test, the Supreme Court has held that the receipt of public funds and the performance of a function serving the public, alone, are not enough to make a private entity a state actor. Rendell-Baker v. Kohn, 457 U.S. 830, 840(1982); Black. et al. v. Indiana School District, 985 F.2d 707,710-Il (3d Cir. 1993) (a school bus driver is not performing an exclusive government function, even though paid by the state and performing a service for the public). The fact that hospitals and nursing homes may be extensively regulated and may receive financial support from the government through

Medicaid and Medicare does not make them state actors . 457 U.S. *at* 1011. In Blum, the Supreme Court flatly rejected the argument that the State's payment of more than 90% of nursing home patients' medical expenses and the licensing of nursing homes does not create a symbiotic relationship between the state and nursing homes. Additionally, the vast majority of Courts of Appeals have determined that

13

the recipient of federal construction funding, Medicare and Medicaid funds, and the existence of tax exemption, as well as state licensing requirements for non-profit hospitals, do not constitute state action under 42 U.S.C. § l983. See Hodge v. Paoli Memorial Hospital, 576 F.2d 563 (3d Cir. 1978) (citing Schlein v. Milford Hospital Inc., 561 F.2d 427 (2d Cir. 1977); Greco v. Orange Memorial Hospital Corporation, 513 F.2d 873 (5th Cir.), cert. denied, 423 U.S. 1000(1975); Jackson v. Norton-Children's Hospitals. Inc., 487 F.2d 502(6th Cm 1973), cert. denied, 416 U.S. 1000(1974); Doe v. Bellin Memorial Hospital, 479 F.2d 756 (7th Cir. 1973); Briscoe v. Bock, 540 F.2d 392 (8th Cir. 1976); Watkins v. Mercy Medical Center, 520 F.2d 894(9th Cir. 1975); Ward St. Anthony Hospital, 476 F.2d 671(10th Cir. 1973)).

Accordingly, the receipt of federal finding is not determinative of state action. Private entities are not transformed into state actors by the simple provision of

funds. Because Mr. Schneller cannot establish state action, he cannot establish a cause of action under 42 U.S.C. § 1983 or related statutes, which provide a necessary conduit through which the plaintiff might recover for alleged federal rights violations perpetrated against him. Accordingly, I will dismiss Counts IB, IC, ID, and IE.

If these federal claims were properly before me, they would still fail as untimely. Although Rule 12(b) does not explicitly permit the assertion of a statute of limitations defense by a motion to dismiss, the so-called "Third Circuit Rule" allows a defendant to assert a limitations defense in a Rule 12(b)(6) motion "if 'the time alleged in the

14

statement of a claim shows that the cause of action has not been brought within the statute of limitations.'" Zankel v. Temple University, 245 Fed. Appx. 196, 198 (3d Cir. 2007) (citing Robins v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002)). Because these federal statutes do not set forth a specific statute of limitations, the claims are subject to Pennsylvania's two-year statute of limitations. City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 124(2005) (where a plaintiff relies upon federal statutes in asserting a claim, and those statutes do not contain a specific provision regarding the time within which an action maybe brought, federal courts apply the statute of limitations governing suits for personal injury in which

the action arises); Wilson v. Garcia, 471 U.S. 265, 275 (1985); see also Lake v. Arnold, 232 F.3d 360, 368 (3d Cir. 2000) (actions arising under Sections 1983,1985 and 1986 are subject to the statute of limitations prescribed for personal-injury actions in the state in which the relevant events occurred). Pennsylvania's personal injury statute of limitations is two (2) years. Vojtasek v. Diocese of Allentown, 916 A.2d 637,640 (Pa. Super. 2006); 42 Pa.C.S.A. § 5524(2). The death of Marjorie Schneller is a discreet and identifiable event, and the statute of limitations on any claims arising from her death or any of the alleged events that precipitated her death, began to arise on March 31, 2002. This action was commenced on February 16, 2006, almost four (4) years later, and is thus untimely by two (2) years. Accordingly, Mr. Schneller's federal claims would be time-barred if they were properly before me.

Finally, the plaintiff claims that jurisdiction exists pursuant to 42 Pa.C.S. § 5535.

15

Title 42 Pa.C.S. § 5535(1) provides: "If a civil action or proceeding is timely commenced and is terminated, a party, or his successor in interest, may, notwithstanding any other provision of this subchapter, commence a new action or proceeding upon the same cause of action within one year after the termination and any other party may interpose any defense or claim which might have been interposed In the original action or

proceeding." The plaintiff claims that this statute supplies jurisdiction because his prior civil action docketed at 06-cv-0698 was terminated by the court, and a new action was timely commenced. Mr. Schneller's reliance on this statute is misplaced. Title 42 Pa.C.S §5535(2) specifically provides that "paragraph (1) does not apply to an action to recover damages for injury to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another." Accordingly, in this wrongful death action, jurisdiction cannot be based on 42 Pa.C.S. § 5535.

Mr. Schneller also claims that the court has supplemental jurisdiction over his remaining state law claims pursuant to 28 U.S.C. § 1367(a), which provides:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they forrn pad of the same case or controversy under Article Ill of the titited States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The state law claims ~ this complaint substantially predominate over the § 1983 claims. See 28 U.S.C. § 1367(c)(2). The federal claims over which the court had

16

jurisdiction will be dismissed. 28 U.S.C. § 1367(c)([3]). Accordingly, I decline to exercise supplemental jurisdiction over the state jaw claims in this case.

I note that if the state law tort claims were properly before me, however, they would still be dismissed as untimely. The plaintiff and eleven of the twelve defendants are residents of Pennsylvania, and all relevant events in this case arose in Pennsylvania. It is well established that a federal court shall apply Pennsylvania substantive law and federal procedural rules to the resolution of state Jaw claims. See Erie Railroad Company v. Tomkins, 304 U.S. 64 (1938)). Accordingly, Pennsylvania law governs the disposition of the plaintiffs state law tort claims. In Pennsylvania, the applicable two-year statute of limitations provides that: "The following actions and proceedings must be commenced within two years:

(1) An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.

(2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or *unlawful violence or negligence* of another

(3) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof. . .

(4) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conductor any other

> action or proceeding sounding *in* trespass, *including* deceit *or fraud,* except an action *or* proceeding subject to another limitation specified in *this* subchapter.

Title 42 Pa. C.S.A. § 5524. Thus, under § 5524(2), because the case was filed almost

17

four (4) years after Mrs. Schneller's death, the plaintiffs state law claims arising from her death or the care she received in the months preceding her death would also be time barred.

In conclusion, while the plaintiff attempts to bring federal claims in combination with his predominant state law claims, the federal claims will be dismissed for lack of subject matter jurisdiction and for failure to state a claim. In the alternative, if the federal claims were properly before me, they would be dismissed as untimely. Finally, I decline to exercise supplemental jurisdiction over the state law claims, most of which are also untimely.[6]

An appropriate Order follows.

---

[6] Any breach of contract claims in this complaint would be timely because under Pennsylvania law, an action for breach of contract is subject to a four (4) year statute of limitations. Pa.C.S.A. § 5525. Mrs. Schneller died on March 31, 2002, and the earlier of these two cases was filed on February 16,2006, over a month within the statute of limitations. Because I decline to exercise supplemental jurisdiction, this point is moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES D. SCHNELLER, et al.,

CIVIL ACTION .

Plaintiffs

v.

NO.06-0698

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

JAMES D. SCHNELLER, et al

CIVIL ACTION

Plaintiffs

vii.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED JUNE 26, 2009

ORDER

AND NOW, this 25 day of June, 2009, upon consideration of the plaintiff's motion for reconsideration filed both in Civil Action No. 08-1479 (Document #72) and in Civil Action No.06-0698 (Document #39), and the

defendants' responses thereto, it is hereby ORDERED that the motion is DENIED.[1]

---

[1] On March 19,2009,1 dismissed the above captioned cases. The plaintiff filed a motion for reconsideration to which the defendants responded. Granting a motion for reconsideration is appropriate "if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . .; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Cafe ex rel. Lou-Ann. Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citing N. River Ins. Co. v. CIGNA Reins. Co., 52 P.3d 11941 1218 (3d Cir. 1995)); see also Cont'l Cas. Co. v. Diversified Indus.. Inc., 884 F. Supp. 937.943 (E.D. Pa. 1995) (because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly). The plaintiff has shown none of those grounds. There was no intervening change in the controlling law, no new evidence presented, or no clear error of law or fact in my previous Memorandum and Order dismissing the actions. Accordingly, I will deny the motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES D. SCHNELLER, et al.,

CIVIL ACTION .

Plaintiffs

v.

NO.06-0698

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

JAMES D. SCHNELLER, et al CIVIL ACTION

Plaintiffs

viii.

NO.08-1479

CROZER CHESTER MEDICAL CENTER, et al.,

Defendants

FILED JUNE 26, 2009

ORDER

AND NOW, this 25 day of June, 2009, upon consideration of the plaintiffs motion for leave to reply to the defendants' responses with a motion to dismiss non-diversity defendants and for remand filed in Civil Action No.08-1479 (Document

#77), it is hereby ORDERED that the motion is DENIED.[1]

---

[1] On April 3, 2009, the plaintiff filed a motion for reconsideration of the dismissal of the above-captioned cases. Responses to that motion were due by April 20 2009. See local Rules 7.1 (c) and 8(e). The defendants filed untimely responses on April23, 2009, April24, 2009, and May 8 2009. At least twenty-eight days later, the plaintiff filed this motion for leave to reply to those responses. After review of these papers, I find that nothing in the motion for reconsideration, the defendants' untimely responses, and the plaintiffs untimely request for leave warrant reconsideration of the dismissal of these actions. Accordingly, 1 will deny the plaintiffs motion for leave to reply. Furthermore, waiting until after the dismissal of the actions to motion for the dismissal of the non-diversity defendants and for remand is inappropriate.

Supreme Court, U.S.
FILED
FEB 17 2011
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 10-906

JAMES D. SCHNELLER, Heirs and beneficiaries of MARJORIE SCHNELLER, JAMES D. SCHNELLER, trustee ad litem, Estate of MARJORIE SCHNELLER, JAMES D. SCHNELLER, trustee ad litem, MARJORIE ZITOMER, executrix of the Estate of MARJORIE SCHNELLER, Estate of GEORGE H. SCHNELLER, by and through personal representative JAMES D. SCHNELLER
Petitioner

v.

HERMAN McGILL, M.D.
Respondent

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

KANE PUGH KNOELL TROY & KRAMER, LLP
GEORGE H. KNOELL, III, ESQUIRE
I.D. NO. 23323
510 Swede Street
Norristown, PA 19401-4807
(610) 275-2000

CERTIFICATE OF SERVICE

I, George H. Knoell, III., certify that two true and correct copies of Response of Herman McGill, M.D. in Opposition to Petition for Writ of Certiorari filed by Petitioner, James D. Schneller, Heirs and beneficiaries of Marjorie Schneller, James D. Schneller, trustee ad litem, Estate of Majorie Schneller, James D. Schneller, trustee ad litem, Marjorie Zitomer, executrix of the Estate of Marjorie Schneller, Estate of George H. Schneller, by and through personal representative James D. Schneller were served on Plaintiff Pro Se via U.S. First Class Mail, postage prepaid on February 16, 2011 as follows:

James Schneller
500 East Lancaster Avenue, #111D
Radnor, PA 19087

Angelo L. Scaricamazza, Jr., Esq.
Naulty Scaricamazza & McDevitt, LLC
1617 JFK Blvd., Suite 750
Philadelphia, PA 19103

Barbara S. Magan, Esq.
Post & Schell, P.C.
Four Penn Center
1600 JFK Blvd.
Philadelphia, PA 19103

Kevin H. Wright, Esq.
Kevin H. Wright & Associates
446 North Lane
P.O. Box 812
Conshohocken, PA 19428

Paul C. Troy, Esq.
Kane, Pugh, Knoell, Troy & Kramer LLP
510 Swede Street
Norristown, PA 19401

KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____
GEORGE H. KNOELL, III., ESQUIRE
Attorney I.D. No. 23323
Attorney for Respondent

Certificate under Rule 33.1(h)

I, George H. Knoell, III., certify that the Response of Herman McGill, M.D. in Opposition to Petition for Writ of Certiorari filed by Petitioner, James D. Schneller, Heirs and Beneficiaries of Marjorie Schneller, James D. Schneller, trustee ad litem, Estate of Marjorie Schneller, James D. Schneller, trustee ad litem, Marjorie Zitomer, executrix of the Estate of Marjorie Schneller, Estate of George H. Schneller, by and through personal respresentative James D. Schneller complies with the word limitations. The Response in Opposition to Petition for Writ of Certiorari contains 3,085 words.

KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____

GEORGE H. KNOELL, III, ESQUIRE
Attorney I.D. No. 23323
Attorney for Respondent

I. QUESTIONS PRESENTED

Has the Petitioner presented a compelling reason for the Court to grant Certiorari to review the Entry of Judgment of the United States Court of Appeals for the Third Circuit given that:

A. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed Petitioner's civil action based upon the Court's lack of subject matter jurisdiction; and,

B. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed Petitioner's civil action as untimely; and,

C. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law; and,

D. In the instant matter, the United States Court of Appeals for the Third Circuit has not decided an important

federal question that conflicts with relevant decisions of the United States Supreme Court.

II. TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
TABLE OF AUTHORITIES	4
CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT	8
COUNTER-STATEMENT OF THE CASE	9
SUMMARY OF ARGUMENT	13
ARGUMENT	14
CONCLUSION	19

III. TABLE OF AUTHORITIES

CASES	**PAGE**
City of Rancho Palos Verdes v. Abrams, 606 F. Supp.100 (E.D. Pa. 1985)	12, 18
Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978)	17
Gomez v. Toledo, 446 U.S. 635 (1980)	17
Groman v. Township of Manalapan, 47 F.3d (628) (3d Cir.1995)	16, 17
Lake v. Arnold, 232 F.3d 360, 368 (3d Cir.2000)	18
Menan Co. v. Alt. Mut. Ins. Co.,	

147 F.3d 287 (3d Cir.1998) 13

Oklahoma City v. Tuttle,
471 U.S. 808 (1985) 16

Schneller, et al. v. Crozer
Chester Medical Center, et al.,
No. 06-0698, 2006 U.S. Dist.
LEXIS 21053 (E.D. April 18,2006) 8-9

Schneller, et al. v. Crozer
Chester Medical Center, et al.,
276 Fed. Appx. 169 (3d Cir.2008) 9

Sodi v. Discover Financial
Services, 2004 U.S. Dist.
LEXIS 24133 (E.D.Pa.2004) 13

Strawbridge v. Curtiss,
7 U.S. (3 Cranch) 267, L. Ed. 435 13

Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11 (1979) 14

CODES

28 U.S.C. § 1331 12, 13

28 U.S.C. § 1332 12, 13

42 U.S.C. § 1983 15, 16, 17, 18

42 U.S.C. § 1985 15, 18

42 U.S.C. § 1986 15, 18

42 U.S.C. § 14401, *et seq.* 14, 15

RULES

Rules of Supreme Court of U.S.

Rule 10 7, 12, 17

Pa.R.C.P. 1042.3 8

OTHER AUTHORITIES

U.S. Const. amend. XIV 15

IV. CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

In the Petition for Writ of Certiorari, the Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, the United States Court of Appeals for the Third Circuit affirmed the Judgment of the United States District Court of the Eastern District of Pennsylvania, which dismissed the Petitioner's civil action, based upon a lack of subject matter jurisdiction. The Judgment also dismissed the Petitioner's action as untimely. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

V. COUNTER-STATEMENT OF THE CASE

This matter derives from a civil action that was filed in the United States District Court for the Eastern District of Pennsylvania by the Petitioner, James D. Schneller, Heirs and beneficiaries of Marjorie Schneller, James D. Schneller, trustee ad litem, Estate of Marjorie Schneller, James D. Schneller, trustee ad litem, Marjorie Zitomer, executrix of the Estate of Marjorie Schneller, Estate of George H. Schneller, by and through personal representative James D. Schneller (hereinafter "Petitioner").

On February 12, 2006, Petitioner filed a Motion to Proceed In Forma Pauperis with regard to the underlying professional negligence action against numerous defendants, including Respondent Herman McGill, M.D. (hereinafter "Respondent") in connection with the deaths of his mother, Marjorie Schneller, and his father, George H. Schneller, on March 31, 2002 and October 30, 2001, respectively.[1] This matter was dismissed by the District Court based upon jurisdiction prior to the perfection of service. *See Schneller, et al. v.*

---

[1] By way of background, in October of 2004, the plaintiff commenced a series of actions against these defendants in the Court of Common Pleas of the Counties of Delaware, Chester and Montgomery, alleging both medical and legal negligence in connection with the death of his parents. These cases were dismissed through entries of judgment *non pros* for failure to file Certificates of Merit as required by Rule 1042.3 of the Pennsylvania Rules of Civil Procedure. After exhausting all remedies, plaintiff received a denial of his petitions for writ of *certiorari* by the United States Supreme Court.

Crozer Chester Medical Center, et al., No. 06-0698, 2006 U.S. Dist. LEXIS 21053, *7-8 (E.D.Pa.April 18, 2006). On appeal, the United States Court of Appeals for the Third Circuit vacated the dismissal, holding that Petitioner should have been given an opportunity to amend his complaint. *Schneller, et al. v. Crozer Chester Medical Center, et al.*, 276 Fed. Appx. 169, *171 (3d Cir. 2008). Instead of filing an amended complaint, on March 27, 2008, Petitioner instituted a new, yet identical, lawsuit in the District Court.

In his Complaint, Petitioner set forth the following facts: (1) that George H. Schneller died on October 30, 2001; (2) that Marjorie Schneller died on March 31, 2002, after a stay in two nursing homes, as well as periods of treatment during a period of hospitalization from July of 2001 until her death; and (3) that Marjorie Zitomer is the sister of Petitioner and the executrix and administrator of the estate of Marjorie C. Schneller and co-administrator with Petitioner and Richard Schneller of the paternal estate. Based upon these allegations of facts, Petitioner's Complaint contained the following counts:

Count 1A	Violation of the Assisted Suicide Funding Restriction Act of 1997
Count 1B	Civil Action for Deprivation of Rights
Count 1C	Conspiracy to Interfere with Civil Rights – Depriving Persons of Rights and Privileges
Count 1D	Conspiracy to Interfere with Civil Rights – Obstructing Justice and Intimidating Parties – Battery

Count 1E	Neglect to Prevent Deprivation of Rights and Conspiracy for Deprivation of Rights – Failure to Warn
Count 2	Breach of Contract
Count 3	Breach of Contract
Count 4	Fraudulent Inducement of Contracts
Count 5	Breach of Confidential Relationship, Fiduciary Relationship and Fiduciary Duty
Count 6	Wrongful Death
Count 7	Survival
Count 8	Intentional Tort – Abuse of Power of Attorney
Count 9	Intentional Tort – Abuse of Advance Health Care Directive
Count 10	Negligence *Per Se*
Count 11	Battery
Count 12	Batter – Lack of Informed Consent
Count 13	Product Liability
Count 14	Survival – Negligent and Intentional Infliction of Emotional Distress
Count 15	Survival – Conspiracy
Count 16	Survival – Punitive Damages
Count 17	Professional Negligence – Medical
Count 18	Professional Negligence – Attorney
Count 19	Slander and Libel
Count 20	Fraud and Intentional Misrepresentation
Count 21	Conspiracy
Count 22	Negligent and Intentional Infliction of Emotional Distress
Count 23	Breach of Fiduciary Duty

Count 24	Tortious Interference with Present and Prospective Economic Advantage
Count 25	Punitive Damages

Petitioner identified Respondent as Marjorie Schneller's general physician, indicating that the action against Respondent was one of professional liability and intentional tort.

In response to the Complaint, Respondent filed a Motion for Joinder to the Motion to Dismiss of Defendants Crozer Keystone Health System and Crozer Chester Medical Center and Motion to Dismiss of Defendant Lalith Gurijala. On March 19, 2009, the District Court granted all pending Motions to Dismiss and sua sponte denied any remaining motions as moot. The District Court further directed that this case be marked as closed, as all claims had been dismissed as to all of the defendants. Petitioner then filed a Motion for Reconsideration with the District Court, which was denied on June 26, 2009. Subsequently, on July 27, 2009, Petitioner filed a Motion for Leave to Appeal In Formal Pauperis, which was granted on August 3, 2009.

Thereafter, on September 29, 2009, Petitioner filed an appeal to the Court of Appeals for the Third Circuit. On July 20, 2010, the Court of Appeals for the Third Circuit issued an Entry of Judgment that affirmed the Judgment of the District Court.

Petitioner now seeks Certiorari in this Honorable Court.

VI. SUMMARY OF THE ARGUMENT

The Court of Appeals for the Third Circuit properly affirmed the District Court's dismissal of the Petitioner's in its entirety for various reasons. First, the District Court lacked subject matter jurisdiction. Petitioner failed to establish the existence of a federal question, pursuant to 28 U.S.C. § 1331, or, in the alternative, diversity of citizenship among the parties and an amount in controversy in excess of $75,000, pursuant to 28 U.S.C. § 1332.

Second, the plaintiff's federal claims failed as untimely. To assert his claims, the plaintiff relied upon federal statutes that do not explicitly contain a provision regarding time limitations. Consequently, Pennsylvania's two year personal injury statute of limitations is applicable. *See City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 124 (2005). Plaintiff is well beyond the applicable statutory period, as this cause of action arises out of his mother's death on March 31, 2002 and the events preceding that date.

Also, in the Petition for Writ of Certiorari, Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that

conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

VII. ARGUMENT

A. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S CAUSE OF ACTION BASED UPON A LACK OF SUBJECT MATTER JURISDICTION.

Federal Courts are granted subject matter jurisdiction over cases where there is complete diversity of citizenship among the parties and an amount in controversy in excess of $75,000. *28 U.S.C. § 1332(a).* Courts have interpreted this requirement of complete diversity to mean that "jurisdiction [in federal court] is lacking if any plaintiff and any defendant are citizens of the same state." *Menan Co. v. Alt. Mut. Ins. Co.*, 147 F.3d 287, 290 (3d Circ 1998) (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, L.Ed. 435 (1806)). In the case at bar, Petitioner and the eleven named defendants are residents of the Commonwealth of Pennsylvania. It is, therefore, obvious that there is no diversity of citizenship amongst the parties, rendering 28 U.S.C. § 1332(a) inapplicable.

Moreover, Petitioner failed to present a sufficient federal question in accordance with 28 U.S.C. § 1331. Federal question jurisdiction exists in one of two circumstances: "(1) where federal law

creates the cause of action; or (2) the complaint poses a substantial federal question." *Sodi v. Discover Financial Services*, 2004 U.S. Dist. LEXIS 24133, *8 (E.D.Pa.2004).

Petitioner attempted to set forth a federal cause of action to the extent he alleged a violation of the Assisted Suicide Funding Restriction Act of 1997, 42 U.S.C. § 14401, *et seq.* However, this Act does not create a private right action, and, thus does support federal question jurisdiction.

To determine whether Congress intended to create a private cause of action under a federal statute, one should examine the language and circumstances surrounding its enactment. *See Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 15 (1979). Whether a statute creates a particular cause of action, "either expressly or by implication, is basically a matter of statutory construction." *Id.* The Act at issue does not expressly provide for a private cause of action. Moreover, the Act explicitly states that the purpose of its enactment is "to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual." *42 U.S.C. § 14401(b).*

Petitioner alleged that the defendants, including Respondent, are in violation of the Act to the extent they utilized government funds for the purpose of paying for health care services to assist in causing the death of his Marjorie Schenller by euthanasia, mercy killing and assisted suicide. Petitioner has misapplied the law, as the language of

the Act further indicates that its promulgation was based upon the intent of Congress to prevent federal funds and services from being used for the criminal and unlawful purpose of assisted suicide. *42 U.S.C. § 14401(a)(2).* In the case at bar, Petitioner has not filed any criminal charges in connection with the care and treatment of his parents. Not only is Petitioner misguided in his application of the Assisted Suicide Funding Restriction Act of 1997, 42 U.S.C. § 14401, *et seq.*, but also, and, more importantly, there is no private cause of action under this statute, either expressly, or by implication.

Petitioner also asserted civil claims against the defendants, including Respondent, under 42 U.S.C. §§ 1983, 1985 and 1986. Petitioner attempted to set forth civil rights claims against Respondent for violations of Marjorie Schneller's Fourteenth Amendment rights. Specifically, it was alleged that Respondent deprived Marjorie Schneller of life, liberty and property in their implementing of the advanced health care directive over Petitioner's objection, resulting in Mrs. Schneller's death. It was further contended that Respondent conspired to deprive Marjorie Schneller of rights and privileges, including "life, privacy, security, freedom of speech, freedom to write and communicate, right to locomotion, family interaction, rights to legal representation, to meaningful family visits and right to choose her daily regiment and health program." Petitioner alleged that Respondent also conspired for the purpose of "impeding, hindering, obstructing, and defeating, the due course of justice enjoyed by citizens, with the intent to deny plaintiffs the equal protection of the laws," and that these acts constituted causes of action for obstruction of

justice, criminal assault and criminal maiming. Lastly, it was alleged that Respondent neglected to prevent a deprivation of rights and conspiracy for deprivation of rights to the extent they had "knowledge of the wrongs conspired to be done, as enumerated in this complaint, were about to be committed, and having power to prevent or aid in preventing the commission of same..."

The language of 42 U.S.C. § 1983 provides, in pertinent part:

> § 1983. Civil action for deprivation of rights
> Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Id. See also Groman v. Township of Manalapan, 47 F.3d 628, 633, n.4 (3d Cir. 1995).

When interpreting this language, the Courts have opined that the statute does not create substantive rights; but, rather, it provides a remedy

for the violation of rights created by federal law. *Groman, supra* at 633 (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985)). Accordingly, in order to establish a prima facie case under 42 U.S.C. § 1983, a plaintiff must demonstrate: "(1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law." *Groman, supra* (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)).

Petitioner failed to satisfy these requirements. A private actor may cause a deprivation of a constitutional right; however, said actor is only subject to liability under Section 1983, when it does so under color of state law. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978). In the case *sub judice*, the alleged actions of Respondent were not performed under color of state law, and, thus, they cannot be considered state actors.

As Petitioner failed to establish a cause of action under 42 U.S.C. § 1983 or related statutes, a basis for federal question jurisdiction does not exist. Therefore, Petitioner's argument that he has provided a basis for federal question jurisdiction does not warrant Certiorari with this Court. Petitioner does not allege any reason why this Honorable Court would have jurisdiction to hear this claim. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant

decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

B. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S CAUSE OF ACTION AS UNTIMELY.

To assert his claims, Petitioner relied upon federal statutes that do not explicitly contain a provision regarding time limitations. Consequently, Pennsylvania's two year personal injury statute of limitations is applicable. *See City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 124 (2005) (where a plaintiff relies upon federal statutes in asserting a claim, and those statutes do not contain a specific provision regarding the time within which an action may be brought, federal courts apply the statute of limitations governing suits for personal injury in which the action arises). Moreover, actions brought under 42 U.S.C. §§ 1983, 1985 and 1986 are subject to the statute of limitations prescribed for personal-injury actions in the state in which the relevant actions occurred. *See Lake v. Arnold*, 232 F.3d 360, 368 (3d Cir.2000).

This matter is well beyond the applicable statutory period, as this cause of action arises out of his mother's death on March 31, 2002 and the events preceding that date. Petitioner has not established any basis for jurisdiction with this Court, and, therefore, the request for certiorari must be dismissed.

VIII. CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court to deny the Petition for Writ of Certiorari to the United States Supreme Court.

Respectfully submitted,

BY: _____

GEORGE H. KNOELL, III, ESQUIRE
Attorney I.D. No. 23323
KANE, PUGH, KNOELL, TROY & KRAMER, LLP
510 Swede St.
Norristown, PA 19401
(610) 275-2000